No. 3037

United States
Circuit Court of Appeals
For the Ninth Circuit.

CHARLES F. FRIES,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court, for the Southern District of California, Southern Division.

FILED
OCT 27 1922
F. D. MONCKTON,
CLERK.

PARKER & STONE CO., Law Printers, 232 New High St., Los Angeles, Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys:

For Plaintiff in Error:

H. H. HARRIS, Esq., Title Insurance Building, Los Angeles, California.

CLYDE R. MOODY, Esq., Title Insurance Building, Los Angeles, California.

For Defendant in Error:

JOS. C. BURKE, Esq., United States Attorney and

T. F. GREEN, Esq., Assistant United States Attorney.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs	)	Citation
	)	on Appeal
CHARLES F. FRIES,	)	
	)	
Defendant.	)	

UNITED STATES OF AMERICA - - SS

The President of the United States, to Joseph C. Burke Esq., United States Attorney in and for the Southern District of California,

GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, State of California, within 30 days from the date hereof, pursuant to an order allowing an appeal of record in the clerk's office of the United States District Court for the Southern District of California, Southern Division, wherein Charles F. Fries is appellant and the United States of America is appellee, to show cause, if any there be, why the order and judgment of the court rendered against the appellant as in the said order allowing appeal men-

tioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Hon. Benjamin F. Bledsoe, United States District Judge for said District, this Sept 13 1922.

Bledsoe

United States District Judge.

[Endorsed]: No. 280 Rem. UNITED STATES DISTRICT COURT Southern District of California Southern Division In the matter of UNITED STATES OF AMERICA, Plaintiff vs. CHARLES F. FRIES, Defendant. CITATION ON APPEAL Filed Sept. 14, 1922. Chas. N. Williams, Clerk. By R S Zimmerman, Deputy. Recd. copy of within this 13th day of Sept. 1922. Mark L. Herron CLYDE R. MOODY and H. H. HARRIS Attorneys for defendant. 346 Title Insurance Bldg. Los Angeles, California.

UNITED STATES OF AMERICA, SS.

The President of the United States of America,

To the Judges of the District Court of the United States, for the Southern District of California, GREETING:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court, before you between Charles F. Fries, Plaintiff in error, and United States of Amer-

ica, Defendant in error, a manifest error hath happened, to the great damage of the said Charles F. Fries as by his complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 11th day of October next, in the said United States Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

WITNESS, the HON. WILLIAM H. TAFT, Chief Justice of the United States, this 13th day of September in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the United States the one hundred and forty-seventh.

(Seal)

CHAS N WILLIAMS,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By R S ZIMMERMAN

Deputy Clerk.

The above writ of error is hereby allowed.

Bledsoe

Judge.

I hereby certify that a copy of the within Writ of Error was on the 14th day of September, 1922, lodged in the office of the Clerk of the said United States District Court, for the Southern District of California, Southern Division, for said Defendants in Error

Chas. N. Williams

Clerk of the District Court of the United States for the Southern District of California.

By R·S Zimmerman

(Seal) Deputy Clerk.

[Endorsed]: 280 Rem United States Circuit Court of Appeals for the NINTH CIRCUIT CHARLES F. FRIES, Plaintiff in Error vs. UNITED STATES OF AMERICA, Defendants in Error Writ of Error FILED Sep 14 1922 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	)	
Plaintiff,	)	PETITION FOR WARRANT OF REMOVAL UNDER SEC. 1014 R. S.
-vs-	)	
CHARLES F. FRIES,	)	
Defendant.	)	

Comes now, T. F. Green, Assistant United States Attorney for this district, and presents to the Court a certified copy of Final Commitment issued by the United States Commissioner for this district, showing that the defendant CHARLES F. FRIES, was by him held for an Order of Removal to the Eastern Division of the Northern District of Illinois in which district the offense for which the said prisoner has been committed is to be tried, and prays the Court for the issuance of a Warrant of Removal of the said CHARLES F. FRIES to the said Eastern Division of the Northern District of Illinois there to deliver him to the United States Marshal for said district, or to some other proper officer authorized to receive said

defendant, that he may be dealt with according to law.

Joe Burke

United States Attorney.

T. F. Green

Assistant United States Attorney.

[Endorsed]: No. 280 Rem IN THE District COURT OF THE UNITED STATES FOR THE *Southern of* California UNITED STATES OF AMERICA Plaintiff vs. CHARLES F. FRIES Defendant. Petition for Warrant of Removal Under Sec. 1014 R. S. Filed Jan. 9, 1922 Chas. N. Williams, Clerk. By Douglas Van Dyke, Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, -vs- CHARLES F. FRIES, Defendant.	NOTICE OF APPLICATION FOR ORDER OF REMOVAL.

TO CHARLES F. FRIES and his Attorney H. H. HARRIS, Title Insurance Building, Los Angeles, Cal.

You will please take notice that the plaintiff in the above entitled action, United States of America, will apply to the Honorable Judge of the District Court of the United States, in and for the Southern District of California, Southern Division, at the United States Court house in the Federal Building in the City of Los Angeles, California, on the 5th day of December, A. D., 1921, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, for an order of removal directing the removal of CHARLES F. FRIES, to the jurisdiction of the United States District Court for the District of the Eastern Division of the Northern District of Illinois, sitting at the City of Chicago, within said District, having and exercising the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the District Courts of the United States, in order that the said CHARLES F. FRIES, may be there dealt with according to law.

Said application will be based upon the order and decision heretofore, to-wit: on the 8th day of November, made and entered by Stephen *F.* Long, Esq., United States Commissioner, duly appointed and acting as such, under and by which said order and decision the said Commissioner found and adjudged that the offense mentioned and described in the complaint sworn to and filed with the said United States Commissioner, on the ——— day of ———————, against the said CHARLES F. FRIES, wherein the said FRIES is charged with having, on or about the

1st day of January, 1918, knowingly, wilfully, unlawfully and feloniously conspired with divers other persons to violating Section 215, Federal Penal Code, as set forth in a certain indictment filed by the Grand Jury for the Eastern Division of the Northern District of Illinois, and will more fully appear from said complaint, reference to which is hereby made, has been committed, and that probable cause exists to believe the said CHARLES F. FRIES guilty thereof.

Said application will be made upon each and all of the papers, documents and pleadings filed in the said proceeding against said FRIES by the said United States Commissioner, and upon the findings, judgment and commitment made and issued by the said Commissioner in said proceeding on the said 8th day of November, A. D. 1921, a copy of which commitment is hereto attached and made a part hereof, and also upon a certain certified copy of the original indictment filed in the office of the Clerk of the United States District Court for said District in Illinois, and which said certified copy of said indictment has been heretofore filed and has been on file with the United States Commissioner and entitled: "United States of America vs. CHARLES F. FRIES" of the records of said Commissioner.

Dated this 29th day of November, 1921

Robert O'Connor

United States Attorney.

T. F. Green

Assistant United States Attorney.

[Endorsed]: No. 280 Rem IN THE District COURT OF THE UNITED STATES FOR THE *Southern of* California UNITED STATES OF AMERICA, Plaintiff vs. CHARLES F. FRIES, Defendant. Notice of Application for Order of Removal. Filed Nov 30, 1921 Chas N Williams, Clerk. By R S Zimmerman, Deputy. Received Copy this day of Nov 1921 H. H. Harris

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IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

United States of America, Plaintiff,	)	
vs.	)	No. 280 Removal
Charles F. Fries, Defendant.	)	

: : : : : : : : : : :

Jos. C. Burke, United States Attorney for the United States.

Clyde R. Moody and H. H. Harris of Los Angeles, Cal., for the Defendant.

MEMORANDUM OPINION.

Bledsoe, District Judge:- In this matter, I have gone over carefully the exhibits submitted and the

three hundred and fifty page transcript of evidence taken. In my judgment, the indictment states an offense under the law and was sufficient to constitute a prima facie case justifying the removal of the defendant. The evidence offered in his behalf, considered in connection with that tendered by the government in rebuttal thereof, does not suffice to overcome the prima facie case made by the indictment.

From the whole record, I am constrained to conclude that there is ample probable cause for the holding of the defendant for trial upon the charge presented.

An order of removal will therefore be entered.

April 19, 1922.

[Endorsed]: No. 280 Removal. UNITED STATES DISTRICT COURT Southern District of California Southern Division. United States of America, Plaintiff, vs. Charles F. Fries, Defendant. MEMORANDUM OPINION. FILED APR. 19 1922 CHAS. N. WILLIAMS, Clerk By R S Zimmerman, Deputy Clerk.

At a stated term, to wit: The January Term. A. D. 1922 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 19th day of April in the year of Our Lord one thousand nine hundred and twenty-two.

Present:

The Honorable BENJAMIN F. BLEDSOE, District Judge.

United States of America, Plaintiff,	)	
vs.	)	No. 280 Rem.
Charles F. Fries, Defendant.	)	

In accordance with a memorandum opinion filed herein this date, the court of its own motion signs a warrant removing defendant herein to the Eastern Division, Northern District of Illinois.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES, Plaintiff,	)	
vs.	)	PROPOSED BILL OF EXCEPTIONS.
CHARLES F. FRIES, Defendant.	)	

The Defendant appeared in person before Honorable Stephen G. Long, U. S. Commissioner, on proceedings for removal from the Southern District of California to the Southern District of Illinois, Eastern Division.

The Government was represented by Edwin L. Weisl, Esq., Assistant U. S. Attorney, for the Northern District of Illinois.

The defendant was represented by H. H. Harris, Esq., and Clyde R. Moody, Esq., of Los Angeles, California.

Said appearance was on November 5, 1921, at 9 o'clock A. M..

Whereupon the Government introduced a certified copy of Indictment No. 7303 returned in the Northern District of Illinois, Eastern Division, by the Grand Jury in that District, in words and figures as follows:

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

Of the October Term,
in the year 1920.

First Count.

Northern District of Illinois,)
)
Eastern Division;)ss. - - The grand jurors for the United States of America empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Illinois at the October Term of said court in the year 1920, and inquiring for said division and district, upon their oath present, that DANIEL HAYES, JOHN

H. ROGERS, OSCAR C. LAMP, LOUIS F. COURTNER, LESLIE L. PALMER, THOMAS J. SEFTON, CLYDE L. PECK, RALPH W. WEST, CHARLES E. ZIMMERMAN, MATTHEW J. BENCE, EVERETT E. HARRISON, EDWARD G. DAVIS, STEPHEN LALOR, BEN H. BRAINERD, CHARLES F. FRIES, WILLIAM H. FRIES, and R. M. ANDERSON and C. W. PORTER, whose Christian names respectively are to said grand jurors unknown, hereinafter referred to as defendants, continuously throughout the period of time from January 1, 1918, to February 24, 1920, at Chicago aforesaid, in said Eastern Division of said Northern District of Illinois, unlawfully and feloniously did conspire, combine, confederate and agree together, and with divers other persons to said grand jurors unknown, to commit divers, to wit, one thousand, offenses against the United States, in the manner and by the means and methods following, that is to say:

Said defendants, throughout said period of time, were actively engaged in the conduct and management of the business and affairs of The Daniel Hayes Company, of Idaho, a corporation engaged in the business of buying and selling lands, theretofore organized and then existing under the laws of the State of Idaho, hereinafter referred to as corporation, and during said period of time acted in that behalf in the following capacities; that is to say:

Said Daniel Hayes was president, treasurer and a director;

Said John H. Rogers was vice-president, assistant to the secretary, and a director;

Said Oscar C. Lamp was vice-president, western manager, and a director;

Said Louis F. Courtner was secretary and attorney;

Said Leslie L. Palmer was agricultural director, western manager, western trustee, and a director;

Said Thomas J. Sefton was office manager;

Said Clyde L. Peck was financial agent;

Said Ralph W. West was a sales manager;

Said Charles E. Zimmerman was a general sales manager;

Said Matthew J. Bence was comptroller and a director;

Said Everett E. Harrison was assistant manager of the farming department and a director;

Said Edward G. Davis was a sales manager;

Said Stephen Lalor was a general sales agent;

Said Ben H. Brainerd was a general sales agent;

Said Charles F. Fries was a general sales agent;

Said William H. Fries was a general sales agent;

Said R. M. Anderson was western sales manager; and

Said C. W. Porter was a general sales agent.

Said defendants were, according to said conspiracy, to devise a scheme and artifice to defraud a certain class of persons, to wit, all those persons, then residing in divers states of the United States at great distances from the State of California, who were desirous of purchasing for immediate use lands suitable for

agricultural purposes in said State of California, among whom were the persons hereinafter mentioned under the heading of "Overt Acts;" and said defendants, according to said conspiracy, were, for the purpose on their part of executing said scheme and artifice and attempting so to do, to insert in divers newspapers and other publications having a general circulation throughout the United States, divers advertisements, inciting the persons so to be defrauded to open correspondence with said defendants, under the name of The Daniel Hayes Company of Idaho, aforesaid, corporation as aforesaid, by means of the post office establishment of the United States, to take and receive from said post-office establishment, at Chicago aforesaid, a large number, to wit, one hundred, letters sent by those persons to said corporation in response to said advertisements, and to place, and cause to be placed, in the post-office of the United States at Chicago aforesaid, to be sent and delivered by said post-office establishment, a large number of letters, circulars, pamphlets, and advertisements, each addressed to one of the persons so to be defrauded, to wit, three hundred letters, three hundred circulars, one hundred pamphlets, and two hundred advertisements.

Said scheme and artifice then and there was to be and was a scheme and artifice to defraud said persons by inducing them, by means of representations and solicitations made to them by said defendants and by other agents of said corporation, and by means

of said letters, circulars, pamphlets, and advertisements, to send and pay their moneys, to give their promissory notes, and to transfer their real estate, Liberty bonds, and other valuable securities, to said defendants, under the name of said corporation. for purchasing from said corporation small parcels of land in said State of California, lying in two large contiguous tracts in Madera and Merced counties, called respectively the "Chowchilla Ranch" and the "Bliss Ranch," and together the "Twin-Profit Farms," each containing upwards of five thousand acres of land, by pretending to said persons in said representations, solicitations, letters, circulars, pamphlets and advertisements, that all the lands in said tracts were either fit for immediate cultivation and the raising of crops, to wit, of alfalfa, barley, oats, corn, beans and potatoes, and the growing of fruit trees, or capable of being easily put in condition for the immediate raising and growing of such crops and trees; notwithstanding the fact then was, as said defendants throughout the period of time aforesaid well knew, and as the grand jurors aforesaid, upon their oath aforesaid, charge that it then was, that only a small portion of said lands was then fit for, or capable of easily or ever being made suitable for raising such crops or growing such trees, because the greater portion of said lands then was, by reason of the presence of excessive natural deposits of alkali thereon and want of continuously-running streams and sufficient rainfall, entirely unfit for, and incapable by any prac-

ticable means of being made suitable for, the raising or growing of such crops or trees, or any crops or trees whatever worth the expense of their sowing or planting.

The price of said parcels of land to each of such purchasers, including said unfit lands, was, according to said scheme and artifice, to be two hundred dollars per acre for each acre of said land in said tract, one half of which was to be paid to said corporation in each case either in cash, or in promissory notes, or in cash and promissory notes, or in cash, promissory notes, real estate and Liberty bonds, or other valuable securities, the remainder to be evidenced by a mortgage due in five years from the date of the purchase, which mortgage, said defendants, through said corporation, would pretend, to be persons purchasing said unfit lands, could be met through the sale of the crops to be raised upon said lands during said mortgage term.

And said defendants, according to said scheme and artifice, were to induce the persons to whom they were, by the means aforesaid, to sell parcels of such unfit land respectively to pay said corporation a sum of money, in most instances forty dollars per acre, for preparing their lands for cultivation and for sowing crops thereon, under the pretenses on the part of said defendants and corporation made to such purchasers that said lands of such purchasers would grow crops, and that such crops would be valuable and would produce such returns as to enable those persons to

meet their said mortgage obligations respectively through such returns; whereas in truth and in fact, as said defendants throughout said period of time well knew, no crops of any value exceeding a small fraction of the value of the moneys so paid for said purposes could ever be produced from said unfit lands so sold, or would ever be produced by any bona-fide effort of said defendants or of said corporation, it being a part of said scheme and artifice for said corporation and defendants to expend only a small portion of such moneys so paid to them in cultivating said unfit lands, and that merely for the purpose of concealing said deposits of alkali and the unfitness of said lands for agricultural purposes from the sight of such of said persons as should inspect their purchases of such unfit lands and of anyone who should inspect the same in their behalf.

Said defendants, after so securing the moneys and property of the person who should so purchase parcels of such unfit lands paid and transferred to said corporation as consideration for the purchase thereof, and said promissory notes so given as such consideration, and the moneys of such persons so paid to said corporation for preparing said unfit lands and sowing crops thereon, as aforesaid, and well knowing all the premises aforesaid, and, as aforesaid, the unfitness for the purposes aforesaid of the lands so to be sold to the persons so to be defrauded, and the fact that they were incapable of being made fit for those purposes, or of producing any valuable crops,

were, according to said scheme and artifice, to convert said moneys and property of said persons, and the proceeds arising from the discounting of such promissory notes of said persons, to the sole use of said defendants and of said corporation, without said defendants or said corporation rendering or giving to said persons any service or thing of value in return therefor, and so were to defraud said persons.

Overt Acts.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that certain of said defendants, at the times and place in that behalf hereinafter mentioned in connection with their names, and to effect the object of said unlawful and felonious conspiracy, combination, confederation and agreement, did do, among many others, certain acts; that is to say:

1. Said defendants, on April 29, 1918, at Chicago aforesaid, in said division and district, caused to be placed in the post-office of the United States there, to be sent and delivered by the post-office establishment of the United States, a certain circular then and there addressed to one Lewis W. Canby, at Winfield, Iowa, to wit, a circular of the tenor following:

1. Said defendants, on July 3, 1918 at Chicago aforesaid, in said division and district, caused to be placed in the post office of the United States there, to be sent and delivered by the post-office establishment of the United States, a certain circular then and there addressed to one Harriet C. Daly, at Marshalltown, Iowa, to wit, a circular of the tenor following:

THE DANIEL HAYES COMPANY

The National Farmland Corporation

More cultivated land is needed to bring an increase of food production. The dire necessities of the situation are evidenced by the food restrictions under which we all are living. Every man of us needs to cooperate to his level best with the Government.

The Daniel Hayes Company is doing its best in this spirit of cooperation to get new farms into the hands of those who will cultivate them. From this time forward it will concentrate its energies upon the sale and colonization of the farms of the famous Chowchilla estate in Madera and Merced Counties, in the San Joaquin Valley, of California.

The Chowchilla property embraces 108,000 acres on the east side of the San Joaquin river. It has vast possibilities for doing what the Government wants done. A few years ago it was found that the ranch was underlaid with strata of water-bearing gravel and that by putting down shallow wells an abundance of water could be had for irrigation. The water rises to within eleven feet of the surface and the short lift makes irrigation easy and economical.

Allowing forty acres to the farm, we shall have a total of 2,700 farms whose productive capacity is unexcelled. We are taking advantage of the almost universal desire of people some day to own a home in California. Now, there is a double reason for taking a farm and getting it into a state of productiveness. The profits of farming never were so

great as now and the Government never needed to have new farms under cultivation more than at the present moment.

The Chowchilla farms are attractive for many reasons. The city of Chowchilla is a young and growing municipality on the line of the Southern Pacific Railway, between Fresno and San Francisco. It has an attractive and modern hotel, beautiful school buildings, creamery and various business places. A paved boulevard twelve miles long extends from the city to the heart of the tract and a branch railroad parallels the boulevard and is some fourteen miles long.

A considerable number of farms have been sold and improved and their occupants are prosperous and delighted with the land. These farms are not experimental in any respect. The business of raising alfalfa is one of the most profitable, as it is cut five to eight times a season with an average cutting of about one and a half tons to the acre. The demand for alfalfa is such that the grower is seldom asked to take less than $20.00 a ton, while it is much higher at the present time. Dairying has come in for a good deal of attention and the product is taken at the farmer's door at a profitable price. Those who wish to raise hogs, poultry and other live stock find here an opportunity that is not easily duplicated.

California is best known for its fruits and its climate. But California has all kinds of climate from the extreme of dryness in the southern and eastern part of the state to the extreme of humidity in the north-

western coast country. The San Joaquin Valley is visited by occasional rains during the winter months but irrigation is necessary for the successful raising of crops other than pasture.

Chowchilla is in the heart of the citrus fruit and grape country of the state. Fresno, a few miles to the southeast, is the chief raisin center of the world. Nearby are some of the largest orange groves in California. The Chowchilla lands are suited to growing oranges, lemons, grapes, peaches, figs, olives, pears, and in fact all the fruits of California.

The Daniel Hayes Company, however, realizes that these are crops for the specialist and that certainty of success is found in the growing of alfalfa, in dairying and general farming. We urge the raising of necessities now while we need to help feed our allies in the war.

With the unlimited supply of water for irrigation a succession of crops may be grown on the Chowchilla lands during the ten months' growing season. The company therefore recommends the sure money crops and *and* leaves to the specialist the more technical business of fruit growing, which often bring amazing returns under careful management and marketing.

We are having the cooperation of the Union Pacific and Southern Pacific Railroads' entire Colonization departments. Advertisements in the leading farm and general publications will reach many millions of readers. We suggest that you look for these an-

nouncements, as it is to be a thorough campaign of advertising for the Chowchilla farms.

THE DANIEL HAYES COMPANY

Daniel Hayes, President

Daniel Hayes Building
109 North Dearborn Street
CHICAGO . ILLINOIS

2. Said defendants, on August 3, 1918, at Chicago aforesaid, in said division and district, caused to be placed in the post office of the United States there, to be sent and delivered by the post-office establishment of the United States, a certain circular letter, then and there addressed to Louis Rohresen, at Tripoli, Iowa, to wit, a circular letter of the tenor following:

Established 1855 as C. G. Hayes & Bro.
THE DANIEL HAYES COMPANY
The National Farmland Corporation
The Daniel Hayes Building
109 North Dearborn Street
CHICAGO

August 2nd, 1918.

Dear Sir: -

Have YOU bought a Twenty Acre (or larger) Farm at Chowchilla, California, for yourself?

If you HAVEN'T done this by now, it's OUR fault. We haven't laid before you plainly enough -- convincingly enough, in full justice -- the GREAT, BIG, REAL truths about Chowchilla.

Of course you want to live in California some day. Any man would be foolish -- if he had the oppor-

tunity -- to refuse to enjoy this blessed climate and beautiful country where people live LONGER and HAPPIER.

By our plan you can go out there now, or later, just as you like. You can make the farm pay for itself before you pay for it.

You can start on convenient terms -- and, until the farm has paid for itself, we will crop it out, work it for you -- for a share of the profits.

You have heard and read about what Chowchilla offers. You have been interested in what we are doing at Chowchilla through your neighbors. We want you for one of our neighbors out at Chowchilla; many of us are going to have our own farms out Chowchilla way, you know.

Your friends from your own and other counties will be out there.

Get in on this Special Thirty Day Sale. Take my assurance that this property is wonderful -- that these pieces are among the finest. Get in quickly and take that wonderful trip of ours on our private train the first week in October -- SOME TRIP -- believe me!

I suggest that you talk with our man TO-DAY.

Yours very truly,

THE DANIEL HAYES COMPANY.

Daniel Hayes

President.

An Association of Men who have sold one million acres of farms, over half of which they have reclaimed by irrigation

3. Said defendants, on August 5, 1918, at Chicago aforesaid, in said division and district, caused to be placed in the post office of the United States there, to be sent and delivered by the post-office establishment of the United States, a certain other circular letter, then and there addressed to one Lewis W. Canby, at Winfield, Iowa, to wit, a circular letter of the tenor following:

THE DANIEL HAYES COMPANY
Chicago
U. S. A.

August 5th, 1918.

Dear Sir: -

SAY, DOGGONE IT, -- wouldn't it be fine if we had Forty Acres down here in Illinois or Iowa that we never had to put any fertilizer on, nor plow any crops under -- and where it rains every time you want it to, and stops every time you think dry weather is what you require?

You probably will say -- "There ain't no such animal". But this is exactly what the condition is at Chowchilla, California, where Daniel Hayes Salesmen are selling land on a plan where the farm pays for itself.

Your Father or Grandfather told you how it was in the pioneer days here in Illinois and Iowa. It was a tough job to break up ground and it took several years to make it profitable.

Do you realize that the Daniel Hayes Company will co-operate with you in putting your new land at Chowchilla to work, breaking it up and planting it, and that it pays from $90 to $150 per acre in the first crop of alfalfa?

Alfalfa, once planted, is good in California for eighteen years. We are sure of this because we have a stand of Alfalfa eighteen years old now, and it looks as if it was good for eighteen years more. And it is much better than it was five years ago.

You can slap a crop of sugar beets in and have it harvested by the first of July. Then put in corn, beans, or potatoes for a second crop and get more quantity and better quality than you can get right here at home; and better prices, too!

Honestly, how do you justify yourself for staying in Iowa or Illinois when you have Chowchilla staring you in the face -- the best climate in the world, too.

These Five Thousand Acres we are selling during this Thirty Day Drive are extra choice -- in fact the pick of the tract.

Five Thousand Acres is a very small allotment, only 250 twenty-acre plots. We have to supply our friends and customers all over Illinois and Iowa, you know --a word to the wise.

If I were you I would get busy right on receipt of this letter, and learn from the local Daniel Hayes Man if any of these choice pieces are still left, because, I am telling you, I don't know of a farm opportunity equally good, and remember we prove this by putting

our own money with yours to make your farm pay. It's time for ACTION now.

Yours very truly,
THE DANIEL HAYES COMPANY.
DANIEL HAYES
President.

P. S. John E. Newman, Food Commissioner of the State of Illinois, knows Chowchilla, and knows the Daniel Hayes Company. He spoke before the Daniel Hayes Sales Organization at the Hotel La Salle, July 22, 1918. Read his address enclosed.

4. Said defendants, on April 10. 1919, at Chicago aforesaid, in said division and district, caused to be placed in the post office of the United States there, to be sent and delivered by the post-office establishment of the United States, a certain other circular letter, then and there addressed to one Warren B. Wise, at Sheffield, Illinois, to wit, a circular letter of the tenor following:

Established 1855 as C. G. Hayes & Bro.
THE DANIEL HAYES COMPANY
The National Farming Corporation
The Daniel Hayes Building
109 North Dearborn Street
CHICAGO.

Dear Sir:

Your attention is called to our Greater Chowchilla advertising campaign just begun in the Chicago Tribune.

We started this on Sunday, April 6, 1919, with a two-page spread giving an introductory story about the Great Chowchilla and Bliss Ranchos and the plans for their extensive development.

This campaign alreadv has aroused a wide-spread interest in the work The Daniel Hayes Company is doing with its California farms.

The Chicago Tribune with its Sunday circulation of nearly 800,000 reaches approximately four million people direct in their homes where family questions are discussed and where the subject of a farm and home at delightful Chowchilla naturally will receive attention.

This campaign will be continued indefinitely with a full page in each Sunday issue of the Tribune.

Look for the advertisement each Sunday.

This heavy newspaper advertising campaign is being supplemented by a mail campaign addressed to all who show an interest in the subject at Chowchilla. We have a large force of expert salesmen who are following up the work of the newspaper and other advertising closely.

We have a wonderful advantage at Chowchilla. California is one of the best organized states in the Union. All the communities are working well together. The people have remarkable initiative.

The climate is such that we are taking our purchasers to California any day in the year. There is no closed season for purchasers of Chowchilla farms any more than there is a closed season there for farm operations.

We have started in to make Chowchilla the most attractive agricultural and horticultural community in California. That is a big undertaking but we have the ground work well started. Be sure that you are the owner of a Chowchilla farm so as to be in line for all the benefits resulting from the great development.

The extensive advertising campaign is going well and as fast as we get the work satisfactorily under way in one city we shall establish offices and begin a similar advertising and sales campaign in another leading city.

Already Chowchilla is the most extensively advertised location in the United States. We expect to have every wide awake person in the country know about it and about the work of our organization.

THE DANIEL HAYES COMPANY.

An Association of men who have sold one million acres of farms, over half of which they have reclaimed by irrigation

5. Said Daniel Hayes, on April 18, 1919, at Chicago aforesaid, in said division and district, placed in the post office of the United States there, to be sent and delivered by the post-office establishment of the United States, a certain letter, then and there addressed to one H. J. Miller, at 329½ W. Wilson St., Madison, Wisconsin, to wit, a letter of the tenor following:

Established 1855 as C. G. Hayes & Bro.
THE DANIEL HAYES COMPANY
California Twin Profit Farms.
The Daniel Hayes Building
109 North Dearborn Street
Telephone Majestic 8640
CHICAGO

April 18, 1919.

Mr. H. J. Miller,
329½ W. Wilson St.,
Madison, Wisc.
Dear Sir:-

Your reply to our announcement in the Chicago Tribune has reached us before we had received our printed matter. A few days ago, the electrotypers went on a strike, and this has delayed us in securing our printing.

Within a few days, we shall be in position to mail to you our 48-page book, "TWIN-PROFIT FARMS." This book is beautifully illustrated and gives every detail of our offer.

This Company is now in its sixty-fourth year and during this long period we have never lost a dollar for a client who has followed our instructions. A generation ago, the Daniel Hayes Company sold Iowa land to farmers at $10 to $20 an acre--land that is worth from $200 to $250 an acre today! The opportunity of purchasing good land at a low price is pretty nearly a thing of the past. There are few

sections on the American continent where it is possible to secure the right combination of agricultural conditions that will insure an unusual profit.

Our book tells a story of agricultural success, and this success is being experienced on this same land by HUNDREDS OF FAMILIES! Instead of attempting to describe the land and the profit assurances of our Twin-Profit Farms, we shall ask you to wait for our book. You can make your decision only when you have all the evidence.

When this printed matter is in your possession, you will be impressed by the fact that there is nothing experimental about these Twin-Profit Farms. The demonstrating has all been done.

In that book we shall place before you the testimony of many persons, the majority of whom are practical farmers. Their experience may be relied upon when it comes to deciding the value of land. We shall prove to you that every favorable condition fortifies your investment in one of these farms, and that you are not beset by any unfavorable conditions.

At the time we mail the book, we shall also write to you. We wish to place you in position where it will be possible for you to arrive at your decision, because our book will reveal the facts just as clearly as though you were to take a trip to California for the purpose of inspecting this land. When you do go out to inspect these Twin-Profit Farms, you will

find that our book has given you the whole truth and nothing but the truth.

Very sincerely yours,

DANIEL HAYES
President
THE DANIEL HAYES COMPANY

DH-AZ

6. Said Daniel Hayes, on November 4, 1918, at Chicago aforesaid, in said division and district, placed in the post office of the United States there, to be sent and delivered by the post-office establishment of the United States, a certain other circular letter, then and there addressed to one Wilbur B. Davis, at 207 Grove Street, Joliet, Illinois, to wit, a circular letter of the tenor following:

Established 1855 as C. G. Hayes & Bro.
THE DANIEL HAYES COMPANY
California Twin Profit Farms
The Daniel Hayes Building
109 North Dearborn Street
Telephone Majestic 8640
CHICAGO.

From Mr. Daniel Hayes,
President, The Daniel Hayes Co.,
Chicago, Illinois.
Dear Friend: -

You undoubtedly have read "Twin-Profit Farms", the illustrated 48-page book that I mailed to you in answer to your request for information.

The FACTS have been placed before you.

The experiences and opinions of many who have settled on these Twin-Profit Farm Lands at Chowchilla, Calif., have been given to you for your consideration.

The profit-possibilities - - backed by PROFIT EXPERIENCE of those who live on their Twin-Profit Farms - - have been explained to you.

How do you like the outlook for YOUR OWN PROFIT?

What should land be worth, under cultivation, that PAYS FOUR TIMES THE PROFIT of other land selling for the SAME price?

You pay no more for Twin-Profit farm land than you pay for Mid-western farm land - - but the Twin-Profit Farms have FOUR TIMES the profit capacity!

The Mid-western lands, at $200 an acre, can not advance very much in price because they have reached the limit of their earning-possibilities.

The Chowchilla Twin-Profit Farms CAN and WILL increase in price, because their profit returns are so much greater than the returns realized on other farm land.

Here is an example in simple arithmetic:

The price of 80 acres of good Illinois or Iowa farm land, at $200 an acre, is $16,000.

The price of 20 acres of Chowchilla Twin-Profit farm land, at $200 an acre, is $4,000.

It is easier - - less work - - calls for less equipment - - to farm 20 acres than to farm 80 acres.

But - - your 20-acre Twin-Profit farm PAYS AS MUCH PROFIT as your 80-acre Mid-western farm.

If one farm pays 12-½% on its value, yearly, and another 50% on its cost-price yearly, should the VALUE of the two farms remain the same?

If the 80-acre farm cost FOUR TIMES as much as the 20-acre farm, and yet PAYS NO MORE PROFIT, what should the 2-acre farm be worth, on an investment basis?

Among the 400 or more families who have settled on Twin-Profit Farm Lands, MOST of them are farmers from Iowa, Illinois and other Mid-western states.

When they say that Twin-Profit Farms pay FOUR TIMES the profit, for each acre, compared with Mid-western farm lands, they know what they are talking about!

How did this real opportunity go unnoticed all these years?

Merely because the Chowchilla Ranch and the Bliss Estate were employed as cattle ranches until recently. The West relinquishes its romantic traditions reluctantly. The West-that-was held to its cattle grazing in the open country. But the West-that-is, must heed the fact that railways, growing cities, beautiful motor-roads, factories, rapidly increasing population, are all demanding GREATER UTILITY of fertile land.

Breaking up and farming over 100,000 acres is not one man's job. It calls for ORGANIZED EFFORT!

The 400 or more families now working their Twin-Profit Farms at Chowchilla - - a farming population of

more than 2,000 in these few months - - PROVE that this is not a one-man job, or a one-organization job.

In recent months, we have broken, plowed and cropped THOUSANDS of acres for NON-RESIDENT purchasers - - who see in these Twin-Profit Farms the following very desirable investment elements:

SAFETY - - no danger of loss of the invested capital - - no danger of depreciation, because of the PRODUCTIVITY of this land, and because of the standing and experience of The Daniel Hayes Company, now in its sixty-fifth year of dealing in agricultural lands;

CO-OPERATION and SERVICE. The economy and the certainty of rapid progress made possible by the ORGANIZED EFFICIENCY of The Daniel Hayes Company. You are not left to your own resources; you are not simply sold a tract of land and forgotten. You become PART OF this great farming organization that breaks your land, irrigates it, crops it and farms it for five years - - or that permits you to move on your land AT ONCE if you are ready to start right in farming;

QUICK PROFITS - - no long, costly waits - - but the actual realization of profit beginning the second year;

THE PROTECTION OF EXPERIENCE! You are not asked to do the experimenting. Two thousand prosperous, happy, money-making persons are already settled on their Twin-Profit Farms - - and their ex-

perience has done all the PROVING you need as to the productivity of these farms and the dependability of The Daniel Hayes Company;

HIGH-CLASS LAND AT A NOMINAL PRICE - - not "bargain land" that is sold on a price basis, but QUALITY LAND sold on an honest basis of valuation. Never look at the price-tag on land, and think that there is nothing else to inspect. Get VALUE - - and never expect to fatten your purse later on by flattering your purse in the beginning;

CASH MARKETS for everything grown on your land - - the auction plan of selling, with the privilege of NOT making a sale if the bid-prices are not satisfactory;

ORGANIZED PRODUCTION - - with neighbors not trying to under-sell you, but working WITH YOU to keep up the prices!

Now, add to these Chowchilla Truths, these further important facts:

You have the most delightful climate on earth - - life in the San Joaquin Valley - - but in the most agreeable part of that valley, right opposite Pacheco Pass, with its tempering breezes from the ocean.

You do none of the pioneering. That has been done for you. You have the advantage of the highest-class transportation, the short distance to many good-sized towns and cities - - and the benefits of schools, churches and motor-roads, with the great Jesemite Valley but a few hours distant by automobile!

You are dealing with PROFIT FACTS whether you consider these Twin-Profit Farm Lands for residential purposes or non-resident profit-returns.

If we do the cropping for you, we divide the profit with you - - and we do this for five years. Your land has then been brought to a high state of productivity - - its value has increased greatly - - you have received large profits in the meanwhile.

You may then farm this land on your own account, or rent it to dairy farmers who will pay you MUCH MORE than the highest gross returns of Mid-western farm lands!

In just a few years - - even without going on this land and working it yourself - - you receive your original investment back, and continuously thereafter, you are reaping your PROFIT-HARVEST!

If you operate your Twin-Profit Farm, you may depend upon not less than $100 an acre yearly - - and if you grow special crops, and set out an orchard, you will make much more. All the while, your TWIN-PROFIT FARM IS BECOMING MORE VALUABLE!

If we do the farming for you, your profits will amount to AT LEAST FOUR TIMES the returns your money would realize were it invested in first mortgages!

If you invest your money at 6%, you must wait 16-2/3 years before you have DOUBLED your principal.

If you are making 25% annually, YOUR MONEY COMES BACK TO YOU EVERY FOUR YEARS - - and its value does NOT remain stationary, as it would in a bond or a mortgage. Its value INCREASES!

To get your Twin-Profit Farm cropped AT ONCE, you pay one-half down, and advance $40 an acre, which is returned to you with 6% interest. You advance that cropping money only ONCE - - -not each year!

You give notes, secured by mortgages, and these amount to $25 an acre payable in three years; $25 an acre payable in four years; and $50 an acre, payable in five years!

By making this kind of contract, YOU GET YOUR WATER-RIGHTS FREE!

If you wish to move on your land right away, you must supply your own well and pumping-plant, reservoir and ditches.

When we do the cropping, your half of the profits will help you pay the balance. Therefore, YOU DO NOT ACTUALLY ADVANCE, out of your own pocket, the full price of $200 an acre. There is no reason why your actual investment should amount to more than your one-half payment of $100 an acre; certainly not much more.

Consequently, under this co-operative plan, YOU ARE NOT ACTUALLY PAYING TWO HUNDRED DOLLARS AN ACRE for your Twin-Profit Farm!

But - - under cultivation, this farm will INCREASE IN VALUE, and soon become worth $400 an acre!

You are making a nominal investment grow into great value.

HUNDREDS OF OTHERS KNOW THAT THIS IS TRUE, BECAUSE THIS IS THEIR EXPERIENCE OF THESE TWIN-PROFIT FARMS AT CHOWCHILLA, CALIFORNIA!

You get the SAME LAND VALUE that these people got - - the SAME co-operation - - the SAME honest treatment.

They did not get the "cream." We are selling the CREAM, because we are selling land of EQUAL value in soil quality and location!

It is to OUR interest to see that you have as good a farm as any other purchaser, because OUR success must be based on YOUR success. Just as the experience of PRESENT settlers and non-resident buyers is an inducement to YOU, so will YOUR success be the same kind of inducement to others!

If you had no better evidence of the truth of these statements than the testimony of settlers on these Twin-Profit Farms, that would be sufficiently good evidence to justify you to make your investment AT ONCE!

However, if all that we have told you is FACT, then we should be willing to fortify that fact by a REFUND GUARANTEE!

We do this NOT because we take for granted that you doubt us, but because it is good business practice to promise only what can be lived up to.

Buying land is SERIOUS to you, and we make it just as serious a matter with ourselves.

WE GUARANTEE that if you will go to Chowchilla, and inspect your land after you have paid down the one-half of the purchase price or made a first payment of $500 (the balance of the half-payment to be made at the rate of $50 a month - - on each 20 acres), and you find this land other than we have represented to you in our book, "Twin-Profit Farms," we will REFUND ALL THE MONEY YOU HAVE PAID, AND PRESENT YOU WITH YOUR RAILWAY AND PULLMAN FARE BOTH WAYS!

You will be *out* guest at our expense for three days, at the beautiful, modern Chowchilla Hotel.

You will be given a pass that entitles you to go over the Chowchilla Ranch and Bliss Estate in company with a representative of this organizarion.

You may arrange to go on one of our regular Profit-Investigation Trips, or go independently - - but if you go alone, be sure to get the pass fro*s* us first.

Whether you intend to make California your home, or live where you are today, the bed-rock merits of this investment must appeal to you.

We succeed through co-operating with MANY.

YOU get the cumulative benefit of ALL of that co-operation!

Getting others to buy - - selling this land rapidly - - we are INCREASING THE VALUE OF YOUR TWIN-PROFIT FARM through this surrounding cultivation.

This work of ours adds profit to you WITHOUT YOUR OWN EFFORTS!

On an investment basis, you may wish 20, 40, 60, 80, 100, 120, 140, 160, 180, 200 or more acres.

You pay the SAME no matter how large a tract you buy.

You pay just as much an acre for 640 acres as you would pay for each of 20 acres.

I have done everything to make this story complete. I can guarantee you all but this one essential point!

I can NOT guarantee that we can hold the price of these Twin-Profit Farm Lands at the present price.

How many acres can you handle - - NOW?

Very sincerely yours,

Daniel Hayes
President
THE DANIEL HAYES COMPANY

DH-CZ4

7. Said Thomas J. Sefton, on January 16, 1919, at Chicago aforesaid, in said division and district, placed in the post office of the United States there, to be sent and delivered by the post-office establishment of the United States, a certain letter, then and there addressed to one T. W. Willey, at Pipestone, Minnesota, to wit, a letter of the tenor following:

Established 1855 as C. G. Hayes & Bro.
THE DANIEL HAYES COMPANY
The National Farming Corporation
THE DANIEL HAYES BUILDING
109 North Dearborn Street
CHICAGO

January
16th,
1919.

Mr. T. E. Willey,
Pipestone, Minn.
R. F. D. 6.

Dear Sir:

In reply to your request we are enclosing descriptive literature of our California property.

This *aldn* sells for $200.00 per acre - 50 percent of the purchase price being paid in cash and the balance secured by a mortgage running for five years at six percent.

In many instances the property is purchased for investment and is farmed by this Company on a fifty percent crop sharing basis. When this is done, the cost of plowing, subsoiling, levelling, seeding, drilling the well and installing pump and motor, and checking the land for irrigation, is paid, one half by the purchaser and one half by this Company. We estimate this cost to be $80.00 per acre.

Our Messrs. Colby and Vaughan will be in Pipestone in the very near future and we have requested them to call and explain the matter to you in detail.

Very truly yours,
THE DANIEL HAYES COMPANY
By T. J. Sefton

TJS:RM

An Association of Men who have sold one million acres of farms, over half of which they have reclaimed by irrigation

8. Said Louis J. Courtner, on September 4, 1919, at Chicago aforesaid, in said division and district, placed in the post office of the United States there, to be sent and delivered by the post-office establishment of the United States, a certain letter, then and there addressed to one L. G. Richardson, at Taylorville, Illinois, to wit, a letter of the tenor following:

Established as C. G. Hayes & Bro. 1855
THE DANIEL HAYES COMPANY
The Daniel Hayes Building
109 North Dearborn Street
CHICAGO September 4, 1919.

Mr. L. G. Richardson,
R.F.D. #3, Taylorville, Ill.
Dear Sir:

We were not a little surprised to receive your letter dated, Chowchilla, California, August 28, 1919, to the effect that you were not satisfied with your purchase of forty acres at Chowchilla, California, and that you desire to cancel the contract.

You will be interested to know that we have sold over ten thousand acres to Iowa farmers and other investors, and over six thousand acres to farm investors in Illinois, and from a half section to a section or more in a dozen different Central and Southern states, during the past year. All these buyers have personally inspected their land, and were not only satisfied, but accepted same, and in many instances increased their original purchases.

You do not give us any reason for requesting cancellation, and in fairness to us, we would appreciate your telling us just why you were not satisfied with the land so that we shall know what the difficulty was and can be guided accordingly in the future.

With the present improvements, and the cultivation of this land by us this fall, there is no question but what this land will bring $300.00 an acre within the next few years, and at least $400.00 within five years.

There is no reason why returns from this property should not be sufficient to give you all your money back within the next three or four years, and after that provide a nice income for life.

Already the value of the land has increased since we have taken hold of the properties and made sales and improvements. You must not overlook the fact that it is not raw land alone that you are buying, but land which is to be put into cultivation the first ensuing season after you purchase it, which means that there is only one season between the unimproved and the improved land in order to give you the benefit of the enhanced value due to such improvement. Where can you find such an investment which will bring you such satisfactory returns as our proposition?

Please let us hear from you.

Yours very truly,

THE DANIEL HAYES COMPANY,

By Louis F. Courtner,

LFC:m Secretary.

9. Said Matthew J. Bence, on September 25, 1919, at Chicago aforesaid, in said division and district, placed in the post office of the United States there, to be sent and delivered by the post-office establishment of the United States, a certain letter, then and there addressed to one Daniel Fagan, at Dubuque, Iowa, to wit, a letter of the tenor following:

Established as C. G. Hayes & Bro. 1855
THE DANIEL HAYES COMPANY
The Daniel Hayes Building
109 North Dearborn Street
CHICAGO

September 25th, 1919.

Mr. Daniel Fagan,
Dubuque,
Iowa.

Dear Mr. Fagan: –

In order to start the work of cropping your land which you have recently purchased from this company, we are taking the liberty, as per the cropping agreement you signed, to draw on you on the basis of $10 per acre on each acre purchased. We trust you will meet this sight draft promptly so that the work will not be delayed.

The farming of the Chowchilla land we sell is under the personal supervision of Mr. L. L. Palmer. Mr. Palmer is a graduate of Washington Agricultural College. He is one of the ten American members of the London Agricultural Society. Prior to joining us he was manager of Lord Aberdeen's 26,000 acre farm in

Canada. We consider Mr. Palmer one of the best men we can employ.

Mr. Palmer has just informed us it is now time to start fall operations. Therefore we trust this draft will receive your early attention.

Yours very truly,
THE DANIEL HAYES COMPANY,
By M J Bence

10. Said Oscar C. Lamp, on January 27, 1919, at Chicago aforesaid, in said division and district, placed in the post office of the United States there, to be sent and delivered by the post-office establishment of the United States, a certain letter, then and there addressed to one Charles Schnoor, at Primghar, Iowa, to wit, a letter of the tenor following:

Established 1855 as C. G. Hayes & Bro.
THE DANIEL HAYES COMPANY
The National Farming Corporation
The Daniel Hayes Building
109 North Dearborn Street
CHICAGO

January 24th, 1919.

Mr. Charles Schnoor,
Primghar, Ia.
Dear Sir:

We take great pleasure in advising you that the farm work at Chowchilla is moving along very rapidly. You will note from the enclosed telegram received from L. L. Palmer, our agricultural director, that we have plowed and leveled 13,000 acres and have completed

seeding 8,500. We are operating 13 seventy-five horse power Holt Caterpillar Tractors day and night and all seeding will soon be completed. The farm purchased by you is included in the above acreage.

Prior to this we have not called upon you for any payment on account of your cropping agreement, but it is now necessary to do so. We are, therefore, giving you the customary ten days' notice that a draft will be presented thru your bank for $10.00 per acre for land which you purchased, this being one-fourth of your share of the cost of the farm work performed.

With best wishes, we are

Yours very truly,

THE DANIEL HAYES COMPANY,

BY Oscar C Lamp

P. S. You will be interested in reading the attached telegrams received from practical farmers and bankers who have purchased and inspected their Chowchilla farms.

An Association of Men Who have sold one million acres of farms, over half of which they have reclaimed by irrigation

11. Said Everett E. Harrison, on February 8, 1919, at Chicago aforesaid, in said division and district, placed in the post office of the United States there, to be sent and delivered by the post-office establishment of the United States, a certain letter, then and there addressed to one M. W. Houser, at Cedar Rapids, Iowa, to wit, a letter of the tenor following:

Correspondence should be addressed to the company and not to individuals

Established as C. G. Hayes & Bro. 1855
THE DANIEL HAYES COMPANY
The National Farming Corporation
The Daniel Hayes Building
109 North Dearborn Street
CHICAGO February 8, 1919.

Mr. M. W. Houser,
320 Second Ave.,
Cedar Rapids, Iowa.
Dear Sir:

The nature of our farming operation in California is such that it will be impossible for us to accept anything but cash in payment of cropping agreements. Up to February 15th we will accept stock in payment of land, but I know of no case where we have accepted stock in payment of cropping agreements.

Your letter of the 30th came in just in time for me to rescue a draft that was just going out and I have been holding this to send direct to you as you request.

We regret Mr. Houser that we are unable to make this trade with you and if you could realize the amount of expenditures that we are making in developing this land I think you would appreciate our attitude.

Yours very truly,
THE DANIEL HAYES COMPANY
BY E. E. Harrison

EEH-HA.

12. Said Charles E. Zimmerman, on November 20, 1919, at Chicago aforesaid, in said division and district, placed in the post office of the United States

there, to be sent and delivered by the post-office establishment of the United States, a certain letter, then and there addressed to one Mrs. Lillian M. Pierce, at Red Key, Indiana, to wit, a letter of the tenor following:

Established as C. G. Hayes & Bro. 1855
THE DANIEL HAYES COMPANY
The Daniel Hayes Building
109 North Dearborn Street
CHICAGO

All correspondence should be addressed
to the Company and not to individuals

November 20th, 1919.

Mrs. Lillian M. Pierce,
Red Key, Indiana.
Dear Mrs. Pierce:

Your favor of the 18th has been referred to the writer for attention.

The letter which you received from the Daniel Hayes Company should not have been sent you. This letter was meant for some of the people who had been connected with the company in the past and whose connection had been severed by the company, giving them a statement of facts showing why the action had been taken.

I assure you that the company is in better shape today than it has ever been. We have ten tractors at work at the present time and all development is going ahead at a rapid rate and this development will be greatly increased from time to time.

The deed to your purchase will be ready in the very near future, as we are in position to make up all deeds promptly. The delay in this case has been occasioned by the fact that we are merely waiting for a recorded map from California.

The California real estate laws provide that the plat of a property must be recorded in the local county recorder's office before deeds are issued. Sometimes it requires a little time to get the plat of land made a matter of record. There is absolutely no cause for worry on your part in the matter.

I wish to assure you of our very hearty appreciation of your kindness in co-operating with us in interesting people in Chowchilla. No doubt, we will be in a position in years to come, to reciprocate your favors in a great many ways and it will always be a pleasure for us to do so.

With best wishes and kindest regards, I am,

Most sincerely yours,

THE DANIEL HAYES COMPANY

C. E. Zimmerman, General Sales Mgr.

CEZ*M

CONCLUSION.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said defendants, continuously throughout the period of time, at the place, and in manner and form, aforesaid, unlawfully and feloniously did conspire to commit offenses against the United States and certain of said defendants did do acts to effect the object of the conspiracy: Against the peace

and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, named in the first count of this indictment, on January 1, 1918, at Chicago aforesaid in said Eastern Division of said Northern District of Illinois, did devise the scheme and artifice to defraud, described in said first count, by the means and methods in that count set forth, and, afterwards, to wit, on July 3, 1918, for the purpose of executing said scheme and artifice, unlawfully and feloniously did place in the post-office of the United States there, to be sent and delivered by the post-office establishment of the United States to the person to whom it was addressed, a certain circular, to-wit, the circular set forth according to its tenor in overt act No. 1, under the heading "Overt Acts" in said first count, which was then and there addressed to Harriet C. Daly, at Marshalltown, Iowa; and that said Harriet C. Daly then was a person belonging to the class of persons to be defrauded in said first count described: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, named in the first count of this indictment, on January

1, 1918, at Chicago aforesaid in said Eastern Division of said Northern District of Illinois, did devise the scheme and artifice to defraud, described in said first count, by the means and methods in that count set forth, and, afterwards, to wit, on August 3, 1918, for the purpose of executing said scheme and artifice, unlawfully and feloniously did place in the post-office of the United States there, to be sent and delivered by the post-office establishment of the United States to the person to whom it was addressed, a certain circular letter, to wit, the circular letter set forth according to its tenor in overt act No. 2, under the heading "Overt Acts" in said first count, which was then and there addressed to Louis Rohrssen, at Tripoli, Iowa; and that said Louis Rohrssen then was a person belonging to the class of persons to be defrauded in said first count described: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, named in the first count of this indictment, on January 1, 1918, at Chicago aforesaid in said Eastern Division of said Northern District of Illinois, did devise the scheme and artifice to defraud, described in said first count, by the means and methods in that count set forth, and, afterwards, to wit, on August 5, 1918, for the purpose of executing said scheme and artifice, unlawfully and feloniously did place in the post-office of

the United States there, to be sent and delivered by the post-office establishment of the United States to the person to whom it was addressed, a certain other circular letter, to wit, the circular letter set forth according to its tenor in overt act No. 3, under the heading "Overt Acts" in said first count, which was then and there addressed to Lewis W. Canby, at Winfield, Iowa; and that said Lewis W. Canby then was a person belonging to the class of persons to be defrauded in said first count described: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, named in the first count of this indictment, on January 1, 1918, at Chicago aforesaid in said Eastern Division of said Northern District of Illinois, did devise the scheme and artifice to defraud, described in said first count, by the means and methods in that count set forth, and, afterwards, to wit, on April 10, 1919, for the purpose of executing said scheme and artifice, unlawfully and feloniously did place in the post-office of the United States there, to be sent and delivered by the post-office establishment of the United States to the person to whom it was addressed, a certain other circular letter, to wit, the circular letter set forth according to its tenor in overt act No. 4, under the heading "Overt Acts" in said first count, which was then and there addressed to Warren B. Wise, at Sheffield,

Illinois; and that said Warren B. Wise then was a person belonging to the class of persons to be defrauded in said first count described: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

SIXTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, named in the first count of this indictment, on January 1, 1918, at Chicago aforesaid in said Eastern Division of said Northern District of Illinois, did devise the scheme and artifice to defraud, described in said first count, by the means and methods in that count set forth, and, afterwards, to wit, on April 18, 1918, for the purpose of executing said scheme and artifice, unlawfully and feloniously did cause to be placed in the post-office of the United States there, to be sent and delivered by the post-office establishment of the United States to the person to whom it was addressed, a certain letter, to wit, the letter set forth according to its tenor in overt act No. 5, under the heading "Overt Acts" in said first count, which was then and there addressed to H. J. Miller, at Madison, Wisconsin; and that said H. J. Miller then was a person belonging to the class of persons to be defrauded in said first count described: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

SEVENTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, named in the first count of this indictment, on January 1, 1918, at Chicago aforesaid in said Eastern Division of said Northern District of Illinois, did devise the scheme and artifice to defraud, described in said first count, by the means and methods in that count set forth, and, afterwards, to wit, on November 4, 1918, for the purpose of executing said scheme and artifice, unlawfully and feloniously did cause to be placed in the post-office of the United States there, to be sent and delivered by the post-office establishment of the United States to the person to whom it was addressed, a certain other circular letter, to wit, the circular letter set forth according to its tenor in overt act No. 6, under the heading "Overt Acts" in said first count, which was then and there addressed to Wilbur B. Davis, at Joliet, Illinois; and that said Wilbur B. Davis then was a person belonging to the class of persons to be defrauded in said first count described: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

EIGHTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, named in the first count of this indictment, on January 1, 1918, at Chicago aforesaid in said Eastern Division of said Northern District of Illinois, did devise the scheme and artifice to defraud, described in said first

count, by the means and methods in that count set forth, and, afterwards, to wit, on January 16, 1919, for the purpose of executing said scheme and artifice, unlawfully and feloniously did cause to be placed in the post-office of the United States there, to be sent and delivered by the post-office establishment of the United States to the person to whom it was addressed, a certain other letter, to wit, the letter set forth according to its tenor in overt act No. 7, under the heading "Overt Acts" in said first count, which was then and there addressed to T. W. Willey, at Pipestone, Minnesota; and that said T. W. Willey then was a person belonging to the class of persons to be defrauded in said first count described: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

NINTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, named in the first count of this indictment, on January 1, 1918, at Chicago aforesaid in said Eastern Division of said Northern District of Illinois, did devise the scheme and artifice to defraud, described in said first count, by the means and methods in that count set forth, and, afterwards, to wit, on September 4, 1919, for the purpose of executing said scheme and artifice, unlawfully and feloniously did cause to be placed in the post-office of the United States there, to be sent and delivered by the post-office establishment of the United States to the person to whom it was addressed,

a certain other letter, to wit, the letter set forth according to its tenor in overt act No. 8, under the heading "Overt Acts" in said first count, which was then and there addressed to L. G. Richardson, at Taylorville, Illinois; and that said L. G. Richardson then was a person belonging to the class of persons to be defrauded in said first count described: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

TENTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, named in the first count of this indictment, on January 1, 1918, at Chicago aforesaid in said Eastern Division of said Northern District of Illinois, did devise the scheme and artifice to defraud, described in said first count, by the means and methods in that count set forth, and, afterwards, to wit, on September 25, 1919, for the purpose of executing said scheme and artifice, unlawfully and feloniously did cause to be placed in the post-office of the United States there, to be sent and delivered by the post-office establishment of the United States to the person to whom it was addressed, a certain other letter, to wit, the letter set forth according to its tenor in overt act No. 9, under the heading "Overt Acts" in said first count, which was then and there addressed to Daniel Fagan, at Dubuque, Iowa; and that said Daniel Fagan then was a person belonging to said class of persons to be defrauded in said

first count described: Against the peace and dignity of the United States, and contrary to the form or the statute of the same in such case made and provided.

ELEVENTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, named in the first count of this indictment, on January 1, 1918, at Chicago aforesaid in said Eastern Division of said Northern District of Illinois, did devise the scheme and artifice to defraud, described in said first count, by the means and methods in that count set forth, and, afterwards, to wit, on January 27, 1919, for the purpose of executing said scheme and artifice, unlawfully and feloniously did cause to be placed in the post-office of the United States there, to be sent and delivered by the post-office establishment of the United States to the person to whom it was addressed, a certain other letter, to wit, the letter set forth according to its tenor in overt act No. 10, under the heading "Overt Acts" in said first count, which was then and there addressed to Charles Schnoor, at Primghar, Iowa; and that said Charles Schnoor then was a person belonging to said class of persons to be defrauded in said first count described: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

TWELFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants,

named in the first count of this indictment, on January 1, 1918, at Chicago aforesaid in said Eastern Division of said Northern District of Illinois, did devise the scheme and artifice to defraud, described in said first count, by the means and methods in that count set forth, and, afterwards, to wit, on February 8, 1919, for the purpose of executing said scheme and artifice, unlawfully and feloniously did cause to be placed in the post-office of the United States there, to be sent and delivered by the post-office establishment of the United States to the person to whom it was addressed, a certain other letter, to wit, the letter set forth according to its tenor in overt act No. 11, under the heading "Overt Acts" in said first count, which was then and there addressed to M. W. Houser, at Cedar Rapids, Iowa; and that said M. W. Houser then was a person belonging to said class of persons to be defrauded in said first count described: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

THIRTEENTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, named in the first count of this indictment, on January 1, 1918, at Chicago aforesaid in said Eastern Division of said Northern District of Illinois, did devise the scheme and artifice to defraud, described in said first count, by the means and methods in that count set forth, and, afterwards, to wit, on November 20, 1919,

for the purpose of executing said scheme and artifice, unlawfully and feloniously did cause to be placed in the post-office of the United States there, to be sent and delivered by the post-office establishment of the United States to the person to whom it was addressed, a certain other letter, to wit, the letter set forth according to its tenor in overt act No. 12, under the heading "Overt Acts" in said first count, which was then and there addressed to Mrs. Lillian M. Pierce, at Red Key, Indiana; and that said Mrs. Lillian M. Pierce then was a person belonging to said class of persons to be defrauded in said first count described: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Charles F. Clyne
United States Attorney.

[Endorsed]: *No.* 7303. UNITED STATES DISTRICT COURT, NORTHERN *District of* ILLINOIS EASTERN *Division.* THE UNITED STATES OF AMERICA *vs.* DANIEL HAYES, JOHN H. ROGERS, OSCAR C. LAMP, LOUIS F. COURTNER, LESLIE L. PALMER, THOMAS J. SEFTON, CLYDE L. PECK, RALPH W. WEST, CHARLES E. ZIMMERMAN, MATTHEW J. BENCE, EVERETT E. HARRISON, EDWARD G. DAVIS, STEPHEN LALOR, BEN. H. BRAINERD, CHARLES F. FRIES, WILLIAM H. FRIES, R. M. ANDERSON and C. W. PORTER. INDICTMENT Vio. Sec. 37, C. C. Conspiracy to commit postal of-

fences; and Sec. 215, C. C. Using U. S. mails to defraud. POSTAL LAWS. *A true bill,* George Atkinson, *Foreman. Filed* in open court *this.....day of* OCT 28 1920, *A. D. 19* John H. R. Jamar *Clerk.*

The President of the United States of America,
To the Marshal of the Northern District of Illinois,
Greeting:

You are hereby commanded that you take Chas. F. Fries *if* he *shall be found in your district, and* him *safely keep, so that you have* his *body forthwith before the Judge of the District Court of the said United States for the Northern District of Illinois, at Chicago, in the Eastern Division of said District, to answer unto THE SAID UNITED STATES in an indictment pending in the said Court against* him *for* Viol. Sec. 37. C. C.—conspiracy to commit postal offenses, and Section 215-C. C. Using U. S. Mails to defraud Postal Laws. *And have you then and there this writ, with your return hereon.*

Witness, *the Hon.* Kenesaw M. Landis *Judge of the District Court of the United States of America, for the Northern District*
(Seal) *of Illinois, at Chicago, aforesaid, this* 7th *day of* December *in the year of our Lord, nineteen hundred and* twenty, *and in the* 145th *year of the Independence of the said United States.*

John H. R. Jamar *Clerk.*

I return this warrant unexecuted, not having been able to find the within name Chas. F. Fries within my district, this 8th day of December A. D. 1920.

John J. Bradley, United States Marshal
By T. C. Smith Deputy

[Endorsed:] No. 7303. District Court of the United States, NORTHERN DISTRICT OF ILLINOIS UNITED STATES OF AMERICA, vs. John Hayes et al. BENCH WARRANT *Returnable forthwith.* John H. R. Jamar *Clerk. Returned and filed this* 8th *day of* December *A. D. 1920.* John H. R. Jamar *Clerk.*

In the United States District Court,
FOR NORTHERN DISTRICT OF ILLINOIS,
Eastern Division.

I, John H. R. Jamar, Clerk of the District Court of the United States of America, for the Northern District of Illinois, DO HEREBY CERTIFY the above and foregoing to be a true and correct copy of Indictment and bench warrant U. S. vs. Chas. F. Fries, et al. #7303. *as same appears from the original filed in said Court on the* 28th & 8th *day of* October & December *A. D. 1920, and now remaining in my custody and control.*

In Testimony Whereof, *I have hereunto set my hand and affixed the seal of said Court*
(Seal) *at my office in Chicago, in said District this* 13th *day of* October *A. D. 1921.*

John H. R. Jamar
Clerk.

(Testimony of Charles F. Fries.)

It is stipulated that the Charles F. Fries mentioned in the indictment is the Charles F. Fries before the Court.

MR. MOODY: I object to the introduction of any testimony on the ground that the indictment does not state a cause of action, and move to dismiss on that ground.

Motion denied.

CHARLES F. FRIES, the defendant, called on his own behalf, sworn, testified as follows:

DIRECT EXAMINATION.

I am 43 years of age and resided at St Paul, Minnesota some ten years previous to 1920. Prior to the time alleged in the indictment as the beginning of the conspiracy, to-wit, January first, 1918, I was State Manager of a life insurance company of New York for the State of Minnesota. While I was such agent I did not know any of the following named personally:

Oscar C. Lamp, Louis F. Courtner, Leslie L. Palmer, Thomas J. Sefton, Clyde L. Peck, Ralph W. West, Charles E. Zimmerman, Matthew J. Bence, Everett E. Harrison, Edward G. Davis, Stephen Lalor, Ben H. Brainerd, R. M. Anderson, or C. W. porter. I did of course, know my brother, William F. Fries.

I met Daniel Hays first in January, 1918, at Rock Island, Illinois. I met him through one Silas Perkins, who was in his employ as an agent. Silas Perkins had formerly worked in the insurance company with me. He told me he was selling stock in the Daniel Hays Company; that the stock was easy to sell for the

(Testimony of Charles F. Fries.)

reason it was guaranteed by a mortgage bond, in other words, a first mortgage placed with the Title and Trust Company which in turn authenticated the stock as it was sold. He told me there was a chance to get a contract with 15 per cent commission for selling the stock and that is what prompted me to go down to Rock Island to see about it. I did not make an appointment with him but went down to where Mr Perkins was at Waterloo. Mr Perkins told me to go right down and I would be put to work there. When I got there I was told by the District Manager, Mr. John Day, that it was necessary for me first to go to Rock Island to meet Mr Hays and get my qualifications as a salesman. Rock Island was the home office of the Daniel Hays Company. At that place I saw Mr Thomas J. Sefton. I think I met Mr Hays for just a moment in passing through the office. Mr. Sefton told me that they were placing this stock in different districts, 500 shares in each district, with the idea of of afterward putting on a land campaign. They told me at that time of lots of work the Hays Company had done in Twin Falls, Idaho. He did not say where the land would be located they were going to sell. He said they had put Twin Falls on the map. He said the preferred stock guaranteed 8 per cent; that they had previously paid an extra 12 per cent in addition before I went to work for them, making a dividend of 20 per cent on their stock. He said it was a cash

(Testimony of Charles F. Fries.)

dividend. The par value of the stock was $10.00 a share. Sefton said the stock was to be sold at that time for $12.50 a share.

At the time I saw Mr Sefton I entered into a contract with the Hays Company for the sale of their stock. I cannot remember whether it was a written contract or a memorandum contract. I reported directly to the office on most of my sales. The office furnished me with a prospectus and an official statement as to the assets and liabilities.

Witness identifies statement as having been shown to him at that time, said statement being marked Defendant's "Exhibit No. 1."

MR. MOODY: For the purpose of the record I will state that this shows the assets and liabilities of the company as $1,660,031.64 at the time the report was made.

I started to sell stock out of Waterloo, Iowa. I was furnished with a list of the Iowa stockholders in the company for the purpose of showing prospective customers who the stockholders were.

(List of stockholders identified by the witness as being the list above mentioned, offered in evidence and received as Defendant's Exhibit No. 2.)

During the time I was selling stock there was submitted to me a general list of the stockholders of the Daniel Hayes Company. I ceased selling stock in June, 1918.

(Testimony of Charles F. Fries.)

(List of stockholders offered and received as Defendant's Exhibit No. 3.)

My first contract was for 15 per cent commission on the sale prices. That contract was reduced to writing.

Q Now I will show you a book which I will call Defendant's Exhibit 4 for identification.

MR MOODY: I do not desire to put it all in at one time, but there are certain conditions I will call attention to that were put in at the time the land campaign was started. All of these pictures were put in at the time the land campaign was started. This is a copy of the statement that was in the prospectus.

(The Witness) Exclusive of the photographs of Chowchilla and of my letters bearing date later than January 1, 1918, the rest of the book was furnished as a part of the salesman's kit by the Hayes Company to show prospective customers for sales of stock. The pictures of Chowchilla and the letters were added at the time the land campaign was started. They were added by the company and the pictures and letters were furnished by the company.

(Said book offered as Defendant's Exhibit No. 4 and received in evidence.)

The first picture in the book was of Mr. Perrine. I was told by Mr Hayes that he had done great things in the West in connection with the development of Twin Falls and adjacent Idaho territory. The second picture is that of Daniel Hayes, Sr. I was told that

(Testimony of Charles F. Fries.)

he has a wonderful record as to his honesty and integrity in the land business; that he had done great things in the West and in and around Rock Island in the way of development of land. He had just retired and I understood his son, Dan Hayes Jr. had become president.

The next picture is of Daniel Hayes Jr., president of the Hayes Company. The next picture is that of the Daniel Hayes Building at 109 North Dearborn Street, Chicago. Their office was moved there in the spring or early summer of 1918. I was first informed by Mr Sefton that the building was the property of the Daniel Hayes Company, I was afterward informed that it was under a long lease. I obtained the latter information perhaps around the first of 1919. That was explained to me by Mr John H. Rogers, Vice President of the company. He was also the company's counsel. I understood that he had been a judge in South Dakota. When the company moved into this building they occupied the second floor and part of the other floors. I never saw any other name on the building except the Daniel Hayes Company.

I had many conversations in connection with the brief statements of these sketches of the individuals contained in this exhibit through the course of my employment with the officers of the company. I never made any investigation on the outside but accepted them as facts.

(Testimony of Charles F. Fries.)

It is stipulated that at the time referred to by the witness the Chicago Herald maintained a department known as "The Bureau of Agriculture and Industry".

Letter of March 26, 1916 read, said letter being a part of Defendant's Exhibit 4.

(The Witness) After I was supplied with this book I did not hear any of these sentiments expressed in the letters just read controverted or any criticisms of the Daniel Hayes Company and its methods up to the time of the complaint of E. M. Ward. During all the period up to that time I presented these letters and facts to prospective customers both for land and stock. This letter which is handed me purporting to be from the president of the Daniel Hayes Company of Idaho dated March 4, 1918, was given me by an officer of the Company to be shown to any one that would be interested, a prospective customer for stock or land.

Said document offered and received as Defendant's Exhibit No. 5.

Witness identifies by-laws of the Hayes Co. furnished to him by officers of the Company, offered and received as Defendant's Exhibit No. 6. Exhibit 6 read.

Witness identifies a written contract dated May, 1918, for selling stock in the Daniel *Gayes* Co., said contract being between the witness and Daniel Hayes Co., offered and received as Defendant's Exhibit 7.

MR. MOODY: I do not desire to take up the time of the Commissioner to read this. The sole

(Testimony of Charles F. Fries.)

purpose in introducing it is to show the manner in which this man became connected with the Daniel Hayes Company and the fact that he was treated on the same terms, as an employe, as in other contracts.

Who, if anyone, connected with the Daniel Hayes Company told you about the land campaign?

A Mr. Daniel Hayes, Jr.; Mr Thomas T. Sefton, who was at that time sales manager; Mr John H. Rogers, the vice-president; Mr. Mark Bennett, who was supposed to be an engineer and soil expert; and there are others whose names I do not recall.

(THE WITNESS) The land was situated in and around Chowchilla California. They represented they had 108,000 acres for sale. They said this land was 100 per cent land, good land, and would raise alfalfa. They showed me an engineer's report --- Mr I. U. McPherson--which I carried but which I have lost in some way.

MR MOODY: Have you that report of Mr McPherson's?

MR WEISL: I don't think we have it here.

(THE WITNESS) They had parties there who gave me personal assurances, Mr Mark A. Bennett in particular. He claimed to have been over the tract and knew all about it. I had never been in California prior to that. I also talked with Mr E. H. McElroy. He said he had been over the ranch and said it was elegant land, a great climate, and so forth. I talked

(Testimony of Charles F. Fries.)

with a man by the name of W. L. Fry from Waterloo, Iowa. I had sold him stock in the Company. He lived at Aurora, Iowa. I told him I was the last man selling stock in the Hayes Company and Mr. Hayes wanted my services in the land department, which I was hesitant about doing because it required me to sell from a map which I did not believe was possible. He informed me he had bought out there; that it was a fine proposition. He was not an officer of the Company. He was a citizen of Aurora. Mr Hayes said he had not seen the land. Mr Bennett had seen it. I did not talk with Mr McPherson. I cannot recall the details of the report. I did not prior to the time I undertook the sale of the land, receive any adverse reports or criticisms. I did not at any time help the Company prepare for its advertising pamphlets or its literature. I was furnished a great deal of literature for the purpose of selling stock. That was furnished at the company's cost. I do not know where they got it of my own knowledge. I accepted the literature they presented and the statements as being true. I sold the land believing those statements to be true.

Witness identifies a document as his authority to act as land agent; said document offered and received in evidence as Defendant's Exhibit No. 8.

(THE WITNESS) The Hayes Company sold this land at $200 an acre, $100 of which was carried back on the mortgage of five years duration drawing 6

(Testimony of Charles F. Fries.)

per cent interest. The other $100 was to be paid in cash or bankable paper. In addition they agreed to put it all into alfalfa or into an equally valuable crop. They estimated the cost of subduing the soil and putting in a well for irrigation, planting and seeding, at about $80 an acre. They proposed to advance one-half and the purchaser to advance the other half and we were instructed to get additionally $40 an acre for crop purposes and it was necessary to get a full and complete settlement and the money turned into the Company before the party went to see the land. Those were our instructions. It was provided in the contract if the purchaser after inspecting the land with an officer of the Company within 90 days, was not satisfied, the money would be refunded. Those were the terms of the contract.

If a man was unable to pay cash we were instructed to take paper which we in turn turned into the bank. The bank gave us a certificate of deposit or bank draft. In nearly every instance the bank would be the bank where the customer did his business. It was always explained to the customer that the notes would be immediately cashed. There have been cases where we agreed to hold the paper for a little period of time. We were not supposed to but we did it. We never cashed any parties' paper without the knowledge of the parties that it had to be done.

(Testimony of Charles F. Fries.)

The land campaign started the early part of July, 1918, and I had been with the Company since January, 1918.

Q I will show you a letter, which I will call United States Exhibit No. 9 for identification, and ask you if that is the preliminary statement of the terms under which you were to work.

(Document handed to counsel for plaintiff.)

MR WEISL: No objection.

Q BY MR MOODY: I will ask you if that is such a letter, and your answer thereto (handing papers to witness).

A Yes, sir.

Q I offer both the letters and the answer as Defendant's Exhibit No. 9.

(Exhibit read to the Commissioner.)

Q BY MR MOODY: Did you sign that?

A Yes.

Q Now I show you a contract dated July 1, 1918, which I will call Defendant's Exhibit No. 10 for identification. Is that the contract that was drawn up pursuant to that letter under which you first sold land for the Daniel Hayes Company?

A Yes.

Q Is that your signature at the end of the contract?

A Yes, sir.

MR MOODY: We offer it in evidence as Defendant's Exhibit No. 10.

(Exhibit read to the Commissioner.)

(Testimony of Charles F. Fries.)

Q Now, Mr Fries, did you adhere to this clause of this contract strictly in all of your subsequent negotiations for the sale of land: "The said salesman to use his best efforts in the sale of said land contracts and to comply with all rules and regulations of the Company which are now or may hereafter be in force, and make no representations, promises or agreements which are not contained in the blanks and literature issued by said company or expressly authorized by it". Did you strictly adhere to that clause of this contract?

A Yes, sir.

(THE WITNESS) All the representations I made to prospective purchasers was authorized either in the literature or through personal interview with members of the company. At the time I undertook the land campaign there was literature prepared which I was to exhibit to prospective purchasers. Referring to Exhibit 4, the pictures of the Chowchilla project were inserted in this salesman's kit at that time for the purpose of enabling me to portray the Chowchilla project to purchasers. I do not know anything about the manner in which the pictures were taken nor did I have anything to do with the taking of them. We were asked to turn in our kit to have the photos put in them and they were put in and sent back to us. These letters in the back of the book (Exhibit 4) signed by a number of people relative to the project were also placed in there at the same time by the company. I was not

(Testimony of Charles F. Fries.)

at that time personally acquainted with any of the people who signed these letters. I accepted these letters at their face value.

It is stipulated that Chowchilla is about half way between Merced and Madera, California, and 18 miles from Merced and 16 from Madera.

Q BY MR MOODY: Now I will show you what I will call Defendant's Exhibit 11 and ask you if that is some of the literature furnished you for the purpose of selling that land.

A Yes, sir.

Said document introduced and received in evidence as Defendant's Exhibit 11.

(THE WITNESS) This literature was not all furnished at one time. It kept coming in different quantities during the campaign. There was hardly a day we did not get something. I am unable to state which came first.

(Pamphlets and literature offered and received in evidence as Defendant's Exhibits 12, 13, and 14 respectively.)

(THE WITNESS) I used those pamphlets and literature for the purpose of selling that land and showed them to my customers.

Q Mr. Fries, this purports to be published by the United States Farm Land Company, and in the inside is a sticker pasted on: "Address all communications to Daniel Hayes Company, General Agents."

(Testimony of Charles F. Fries.)

Was that put on before it was sent to you (referring to Exhibit 11)?

A Yes sir.

Q And this was sent to you by the Daniel Hayes Company?

A Yes, sir.

(THE WITNESS) I had not been to Chowchilla at that time. I was depending on this and other literature of similar character and what I was personally assured in the office of the Hayes Company.

I believed the Hayes Company owned the Chowchilla Ranch of 108,000 acres and it was so represented to me from the beginning.

AFTERNOON SESSION.

November 5, 1921.

CHARLES F. FRIES, recalled.

DIRECT EXAMINATION resumed.

BY MR. MOODY:

Q Mr. Fries, when we took a recess for noon we were discussing Defendant's Exhibit No. 11. What did the officials of the Company tell you relative to this literature, as to the permanency of it?

A They told me it was just a temporary circular until their circulars came off the press.

(THE WITNESS) I did not attempt to sell any land under the contract system as outlined in Exhibit 11. The plan I have heretofore stated is the only plan I attempted to sell any lands on. I was told there was

(Testimony of Charles F. Fries.)

108,000 acres of land less the amount that had been sold to actual settlers. My conversations were mostly with Mr Daniel Hayes, sometimes joined by Mr Sefton and Mr Rogers. They stated that the preliminary work had been done by the United States Farm Land Company, that the settlement had been all made there, that they held 108,000 acres less the amount sold to actual settlers.

MR MOODY: I would like to have the Commissioner look through this Exhibit No. 12 so as to see what the salient statements in that particular exhibit are.

In Exhibit No. 13, which I will hand to the Commissioner, I desire to call attention to this statement on the back: "improvement and cultivation of the Great Chowchilla and Bliss ranches, embracing 134,000 acres at Chowchilla, in the San Joaquin Valley, California, where ideal farming and residence conditions are found, believed to be without equal anywhere else in our country."

I understood the Bliss project was just one of the parts of the Chowchilla ranch.

The book you show me which you have called Exhibit 14 we were told to give to purchasers when they were about to make the trip to guide them. I so distributed this book.

MR MOODY: I want the Commissioner to look at this book, because every fact that has so far been

(Testimony of Charles F. Fries.)

introduced in evidence or will be introduced as to this land and this company is included in this book.

(THE WITNESS) I had nothing to do with getting up the information in this book. I know nothing other than what the pamphlet states or what the officials of the company stated as to the truth or falsity of the statements concerned therein.

MR MOODY: I desire to call particular attention to the statements upon page 17 where it says that 20,000 acres are under cultivation in Chowchilla; and on page 9 it states that there were 108,000 acres printed on the gateway that leads to the tract. I think that book is of special importance due to the fact that it contains all of the representations and was handed to people that were going out to verify those statements themselves.

Letter dated September, 1919, introduced as Defendant's Exhibit 16.

Q BY MR MOODY: I show you a letter, without date, addressed as coming from Mr Daniel Hayes, Jr., president of the Daniel Hayes Company, Chicago, Illinois, being an open letter, and ask you if copies of that letter were furnished you for the purpose of showing your prospective customers (handing same to witness).

A This letter I understood to have been sent to all stockholders and other cases where requests had been received for information from the president.

Q And did they send it to you?

(Testimony of Charles F. Fries.)

A They sent it to all salesmen, and asked us to make it a part of our kit if necessary and show it to our prospects. That letter was sent in connection with a pamphlet that was mailed also, called Twin Profit Farms. I don't believe I have that book.

Letter filed as Defendant's Exhibit No. 17.

(THE WITNESS) I distributed copies of those pamphlets called "Twin Profits Farms" and copies of this letter. I have no copies at the present time.

Q I show you a number of bulletins purporting to come from the Daniel Hayes Company, which I will call, for identification, Defendant's Exhibits 19 to 23, inclusive, and ask you if these bulletins were sent you at succeeding periods for your use in selling the land to your purchasers (handing same to witness).

A Yes. These and many more. They came in every day.

Q And at the present time these are all you have of these bulletins?

A Yes sir.

Q There were many more?

A Yes, sir.

(Papers handed to counsel for plaintiff.)

MR WEISL: We have no objection.

THE COMMISSIONER: They will be received.

(Bulletins filed as Defendant's Exhibits 18 to 23 inclusive.)

(THE WITNESS) I had nothing to do with the compilation of this book called "Twin Profits Farms".

(Testimony of Charles F. Fries.)

I supplied none of the data. I used these bulletins and statements therein in order to sell land. I made representations to my people that are in these bulletins and made them upon the strength of the statements in these bulletins. My first visit to California was in the fall of 1918. I had never been to California previous to that time. I came out with two customers and also wanted to see the land myself. These two parties were George W. Harris, of Paulina, Iowa, and Howard W. Gould from near the same place. There were no officials of the Hayes Company to my knowledge on the train. My brother and I were operating together. He made a trip just prior to mine. When I arrived at Chowchilla I was met by E. B. Smith, of the Chowchilla office. Mr Smith said he was living at Fresno, California, but he had previously lived in Nebraska. Mr Smith took us to the hotel and said he would have time to give us a short ride to see some of the land on Robertson Boulevard and then he would take us out the next day. We went for a short ride to Robertson Boulevard. He accompanied us. We took the customers out and showed them the land that they had bought, I think the next morning. That night we talked with lots of folks at the hotel concerning the project. I don't remember their names but I know one was a garage owner on the corner. He told us it was a great country. A country of opportunity and wanted us *us* to come there, and so forth. Mr. E. B. Smith told us that the country was all right, just a

(Testimony of Charles F. Fries.)

question of location and how much a person could handle; that the land was mainly alfalfa land; that he considered that the feasible crop and most of the purchasers were intending to live upon the land for some time.

When we rode down Robertson Blvd. we saw beds of alfalfa, and homes and it all looked nice and prosperous to us. It was our first trip to California and we all were pretty happy. I saw some young trees and vineyards and things of that kind growing. I saw no land that was white or that looked as though it had salt or alkali on it. This was in the fall of 1918, and the farming operations were going on. They showed us tractors and this land looked as though it was all plowed and broken up. I actually saw the tractors working. I personally had a map with me of the land I had sold and I personally checked the parcels of land with the posts on the land to see that the land that was shown them was the land that was purchased. Mr. Gould liked the land very much and accepted it, and Mr. Harris accepted it. Neither of them found fault with the land. No body around Chowchilla had anything detrimental to say about the land. Mr. Smith said he had been in Fresno for seven years and that one could make more money on a proposition in that country in a month than one could in the East in five years. He spoke of the climate and took us all around. Took us down to Fresno and showed us that country. He introduced us to people, the

(Testimony of Charles F. Fries.)

banker and told them what we were there for. They said the project was fine. There was a general endorsement of the proposition.

Q What was your individual opinion as to the merits of this land after you had personally inspected it?

A Well, it was all new to me, and if they could do what they said they could do there was no *qiestion* but what the land was awfully cheap and offered big possibilities. That was my conclusion. I went away enthusiastic; more so than ever.

Defendant's Exhibit No. 24 identified by witness, offered and received in evidence, being a letter from Mr Gould approving the land.

(THE WITNESS) When I returned I gave people the benefit of my personal investigation of the land in my sales campaign. I told them what I saw out here and what I personally believed to be the future of the country, based upon my investigations and the statements of people I had talked to. During the time I was actively engaged in selling the land literature and belletins continued, such as I have introduced in evidence, to be sent from the home office.

The witness identifies a balance sheet of the Hayes Company for the seven months period ending July 31, 1919, same being offered and received in evidence as Defendant's Exhibit #25.

(THE WITNESS) That statement, or copies of it, were sent to me from the home office.

(Testimony of Charles F. Fries.)

Witness identifies Defendant's Exhibit No. 26, being a Bradstreets report on the Hayes Company, same being offered and received in evidence.

(THE WITNESS) I got this from the Daniel Hayes Company purporting to be a Bradstreet's report. I wrote them and asked for an up to date Bradstreet's report and this was what they sent.

Defendant's Exhibit No. 27, being a report of the Bankers National Reporting Co. on the Hayes Company, identified by witness, offered and received in evidence.

(THE WITNESS) I received that also from the Hayes Company. After my return from California I continued actively selling land. I made a subsequent trip to California in February, 1919. Mr. Fred Cornelius from Alta, Iowa; Mr. George Ward, of Primghar, Iowa, and my brother W. H. Fries, and Rev. Kennedy, a minister from Gaza, Iowa, and E. M. Freerks, of George, Iowa; and Mr. Enno Klinkenberg, of George, Iowa, with myself, completed the party. All except my brother were purchasers who had signed the contract in the manner I have indicated. I negotiated the paper of each one per instructions from the Hayes Company with the knowledge of each of these and with their assent. Mr Ward's paper was held by my brother and part of this by agreement was held until they got back. I don't know about that just now. When we arrived at Chowchilla we were met bv officials of the Hayes Company. Mr. Palmer and

(Testimony of Charles F. Fries.)

Mr. Gerald Hayes and there were others. Gerald Hayes is not a relative of Daniel Hayes. This was my first meeting with this man Palmer whom you have read about in these different documents. I don't believe he went to the land with us. He had considerable conversation with my prospects when I was present. He told us it was all good alfalfa land. I remember Mr. George Ward asked him about what we termed the hummocky spots, sort of little minature knolls on the land, on the particular section which Mr. Ward got. I think it was section 2. And the value of these. He said that they contained certain phosphates, that were soft, or something. I don't know. He went on with a technical explanation as to how valuable this land was and how good it was. Except as it might be interpreted here and there to be alkali, there was no alkali of any harmful quantity, or anything of that sort, in the land. He said, "You have a sort of saltine substance that forms here and there, but there is nothing that is harmful. If anything, that would be beneficial."

I saw no white alkali. I believe it was raining. The *The* prospects accepted the land; they even bought more some of them. When they got back Mr. Freerks had printed in a local paper in George, Iowa, an account of his trip, what he had seen and the rest of them were asked to make an expression by wire to the home office as to what they thought of the project.

(Testimony of Charles F. Fries.)

They sent telegrams back there. There was no exception to the satisfaction expressed.

Q And at that time did you have any conversation whatever with Mr. Palmer about the cropping of the land - - how the cropping was progressing?

A That was all discussed, and Mr. Palmer said everything was going along satisfactory. In this case, too, there was a Mr. Schnoor, who had bought land previously from my brother. He was from the same vicinity as these men whom I have mentioned.

When we first met Mr. Schnoor he said he wanted to see my brother, and my brother had sold him two parcels of land, one 40 acres and one 30 and some odd acres, and his contention was that the thirty-odd acres was not what he wanted. There was some difficulty there, anyway. There was some talk about it, and I immediately told my brother to have Mr. Palmer come over and straighten that up, whatever it was; so Mr. Palmer came over right away and they started to talk over there, and he said, "I will adjust anything you want. If you want a different location, or anything you want will be adjusted." And I know Mr. Schnoor said at that time, "Well, you promised to do this before and you haven't done it." Mr. Palmer then said, "Well, it will be done and done promptly; I will guarantee that." So Mr. Palmer said there that he was to take care of it immediately and Mr. Schnoor went out with us then and looked over the

(Testimony of Charles F. Fries.)

property. When we came back, then my brother and I got hold of Mr Palmer alone and asked him about this trouble, and he said Mr Schnoor was just kicking and didn't know what he was talking about, and so on, but he would satisfy him and give him anything he wanted, and for us to go on and not to worry. I know we spent the evening at Mr. Schnoor's house, that same evening we went in there, and had a very pleasant evening, my brother and I and all these people.

Q Now I will show you a large bunch of purported telegrams and ask you if you know what they are and where they came from and to what they refer (handing papers to witness).

A This is a group of telegrams, or copies of telegrams, that were sent me as a salesman to show the prospective purchasers, a brief expression of the different satisfied people, as well as some letters in there from Mr. L. L. Palmer, the agricultural director, to show the progress of things.

MR. MOODY: We desire to offer these one at a time.

MR WEISL: Yes. No Objection.

MR MOODY: The next exhibit number.

THE COMMISSIONER: They will be received in evidence.

Q BY MR MOODY: (After reading defendant's Exhibit No. 25) Now did you know those two men (Molsberry and Kinneth)?

(Testimony of Charles F. Fries.)

(THE WITNESS) I met Mr Molsberry. He is a judge in that district and he gave a very enthusiastic talk on Chowchilla, the soil and possibilities, at a *banquest* that was held in Chicago. You could bring anyone with you. I attended it and he made a speech which was very laudatory. He said it was a country of unlimited possibilities. He bought.

Defendant's Exhibits 28 to 118 inclusive, being *telegram* from purchasers to Haynes Company offered and received in evidence.

Defendant's Exhibits No. 29 and 30 read.

(THE WITNESS) I do not know Mr Herron.

Defendant's Exhibit No. 31 read.

(THE WITNESS) I do not know Mr Muller.

Defendant's Exhibit 32 read.

(THE WITNESS) I don't know Mr. Weber.

Defendant's Exhibit No. 33 read.

(THE WITNESS) I don't know Mrs Harnish.

Defendant's Exhibit No. 34 read.

(THE WITNESS) I do not know him.

Defendant's Exhibit 36 read.

(THE WITNESS) I don't know Mr Chesire.

Defendant's Exhibits 37 and 38 read.

(THE WITNESS) I don't know Mr. McDonald.

Defendant's Exhibits 39 and 40 read.

(THE WITNESS) I do not know Mr Miller.

Defendant's Exhibit No. 41 read.

(THE WITNESS) That is the Mr Rogers who is a director in the Company.

(Testimony of Charles F. Fries.)

Defendant's Exhibit 42 read.

(THE WITNESS) I don't know Mr Legate.

Defendant's Exhibit 43 read.

(THE WITNESS) I don't know John B? Meecham.

Defendant's Exhibit No. 44 read.

(THE WITNESS) I don't know Mr. Skeel.

Defendant's Exhibits 45 and 46 read.

(THE WITNESS) I don't know Mr McFadden.

Defendant's Exhibit No. 47 read.

(THE WITNESS) I don't know him.

Defendant's Exhibit No. 48 read.

(THE WITNESS) I don't know C. H. Elwood.

Defendant's Exhibit No. 49 read.

(THE WITNESS) I don't know John Wingert.

Defendant's Exhibit No. 50 read.

(THE WITNESS) I know Mr. Smith. I met him at Chowchilla with both my parties. I know Mr Fry. I telephoned him regarding this land before I undertook to sell it.

Defendant's Exhibit 51 read.

(THE WITNESS) Mr Palmer is the agricultural director of the project.

Defendant's Exhibit No. 52 read.

(THE WITNESS) This is the Mr Schoor who entertained me and my party at Chowchilla in February, 1919.

Defendant's Exhibit No. 53 read.

(THE WITNESS) I don't know Mr Holdridge.

(Testimony of Charles F. Fries.)

Defendant's Exhibit No. 54 read.

(THE WITNESS) I don't know Mr Faust.

Defendant's Exhibits 55 and 56 read.

(THE WITNESS) I don't know either D. C. Maytag or H. S. Kopel. "Mtown" is Marshalltown.

Defendant's Exhibit No. 57 read.

(THE WITNESS) I don't know Mr Sanders.

Defendant's Exhibits 59 and 60 read.

Defendant's Exhibits 62, 64, 65, 66 and 67 read -- there being no exhibit No. 63.

(THE WITNESS) I am not acquainted with W. T. Neeson or H. Primus.

Defendant's Exhibit No 68 read.

(THE WITNESS) I don't know Mr Claasen.

Defendant's Exhibit No. 69 read.

(THE WITNESS) I do not know Samuel Miller or Peter Larsen.

Defendant's Exhibits 70 and 71 read.

(THE WITNESS) I don't know Mr Gullixson. Colby & Vaughan are salesmen for the Daniel Hayes Company, living in Minneapolis.

Defendant's Exhibit No. 72 read.

(THE WITNESS) I don't know Mr Goepel.

Defendant's Exhibits 73 and 74 read — 73 being a duplicate of 74; also defendant's Exhibit No. 75.

(THE WITNESS) I do not know Mr. Corsaut

Defendant's Exhibit No. 76 read.

(THE WITNESS) I don't know Mr Johnston.

(Testimony of Charles F. Fries.)

Defendant's Exhibit No. 77 read.

(THE WITNESS) I don't know Mr. Ritchey.

Q Now I will ask you to take this bunch (of telegrams) and turn them over and see if you find any there that you do know, keeping them in the same order, and we confine our reading now to those that you know/ There is something over a hundred of them, all in the same vein (handing telegrams to the witness).

A Yes; that one (indicating).

Defendant's Exhibit 87 read.

(THE WITNESS) He is the Rev. Kennedy that I mentioned as being with me on my second trip.

Defendant's Exhibit 88 read.

(THE WITNESS) That is Mr. Enno E. Klinkenborg, another member of the party at that time.

Defendant's Exhibit 89 read.

(THE WITNESS) That is Mr Corneliusen, also a member of that party.

Defendant's Exhibit No. 90 read.

(THE WITNESS) That is Mr Freerks, who was a member of that party.

Defendant's Exhibit 91 read.

(THE WITNESS) That is George Ward, another member of the party at that time. He is a brother of EM. Ward who is in the court room. I do not know Mr Ackerman who is mentioned in Exhibit 92. (Examines balance of telegrams) I do

(Testimony of Charles F. Fries.)

(THE WITNESS) I believe there was a previous contract which was cancelled at the time this one was signed and on which Mr E. M. Ward made his payments which were in the form of notes which represented half of the purchase price. At the time the first contract was signed he requested we hold the notes as he was going to see the land in the very near future and he saw no occasion for discounting them. I told him the discounting of notes was the regular process of doing business. My brother told him we would hold the notes provided he would go out at the time stipulated. He was not able to get away at the time stipulated. His brother and other acquaintances went at the time stipulated.

When we came back after his brother had seen the land Mr. E. M. Ward said he was desirous of seeing the land, and at that time the office was demanding that we make returns on this particular 324 acres which we had sold to him. My brother went to Mr. E. M. Ward and told him we had to get the returns on the land we had sold him. Mr Ward went over to his banker to see if he could borrow money, stating he would prefer to do that rather than have us take the paper. This transpired at Sioux City, Iowa, in the Hotel Martin, in about February. When he came back from the bank he told us the banker had asked him the purpose he desired this money for and that the banker was inclined to frown on such an in-

(Testimony of Charles F. Fries.)

not know any more of the people who sent these telegrams.

Defendant's Exhibit No. 111 read.

(THE WITNESS) I know Mr. Klaus who wrote that telegram. I did not sell him. I had a talk with him about the land and he told me he had contracted for it. I did not see him after I got back. There are a great many wires I have not got.

Whereupon an *adjournment* was taken until Monday, November 7, 1921, at 1:30 P. M.

November 7, 1921, 1:30 P. M.

Proceedings continued.

CHARLES F. FRIES

resumes stand for further direct examination.

(THE WITNESS) I know Mr. E. M. Ward who sits in the court room and know his brother George Ward. He is the samd George Ward who went with me on one of my trips to Chowchilla. I had met E. M. Ward prior to the time we took that trip, I think in January, 1919. Mr E. M. Ward did not accompany me. My brother and I signed up E. M. Ward on a contract. We were working together at the time. George Ward introduced us to his brother, E. M. Ward. This occurred before the trip to Chowchilla when George Ward was along. It was one of the regular contracts.

Contract of E. M. Ward produced by attorney for the Government, introduced in evidence as Defendant's Exhibit No. 119.

(Testimony of Charles F. Fries.)

vestment. Mr. Ward said he had never had to wait for money before and he was used to being accommodated, and he just simply walked out and did not intend to get it. We then told him that we would ourselves discount the notes at the Sioux Falls Savings Bank of Sioux Falls, South Dakota. He said that anything that was satisfactory to us was all right. We then secured proper statement blanks for borrowing power at the Sioux Falls Savings Bank and regular Sioux Falls Savings Bank notes. I talked with Mr. William Ortjes and asked him if he would accept the Ward paper and he said if a proper statement was given he would be glad to do so. Mr Ward finally went with us before an attorney he suggested and made a statement. That was taken together with the papers to the Sioux Falls Savings Bank and discounted and returns made to the company.

MR MOODY: I will read one paragraph of the contract I desire to ask some questions on, (Reading)

"The purchaser having made this agreement without first inspecting the property the Company hereby expressly agrees that if the Purchaser shall personally inspect the property within ninety (90) days of the date hereof accompanied by an officer of the Company so that no mistake may be made as to the location of said tract, the Purchaser may, at his option, if he is not satisfied with said tract, select any unsold lot of equal acreage and of equal price controlled by said Company in place thereof, or may, if he so elects with-

(Testimony of Charles F. Fries.)

in seven days after completing such inspection notify said Company in writing at its office, the Daniel Hayes Building, Chicago, Illinois, that he is not satisfied with his purchase and desires to have his money back, the Company will, within ninety (90) days after receipt of such written notice return to said Purchaser all moneys or notes paid to them without interest."

Now, did you have any conversation with Mr. Ward as to his coming *our* to see the land after he signed the contract and the notes?

(THE WITNESS) Undoubtedly I did. He said he would be glad to go as earl*t* as he could. We stated our willingness to go with him. That was the usual process because we always figured we could sell additional acreage, especially to a man of Mr Ward's standing. We did not go with him. Mr Ward left alone about Easter time/ I do not remember just when I heard about the Ward deal again, but I got a letter from Hayes saying that he had heard Mr Ward left alone and was surprised that one of us did not accompany him. This is the letter I have reference to.

Said letter offered and received in evidence as Defendant's Exhibit No. 120, same being read to the Commissioner.

(THE WITNESS) The article referred to in the letter was an article Mr Kennedy wrote after returning from his trip, which was published in the

(Testimony of Charles F. Fries.)

local papers. Mr Jerry Council mentioned in the letter was a salesman.

I next heard of the deal when I was advised by the company that Mr Ward had rejected the deal. I am unable to state the date but sometime late in April. It came from the home office. I went to Chicago to find out the details. I was very much concerned over the Ward project being rejected. I saw Mr Daniel Hayes. He told me not to worry about that particular sale, that Mr Ward had run out of the purchase of the land, but not to be concerned about Mr Ward; that there were a great many people to be sold, but he advised me to see Mr Ward again at the earliest possible moment, which I did. I saw him at Sioux City, Iowa, which is 500 miles from Chicago, soon after this talk with Hayes.

Q Just give the fullest account of the conversation that you had with Mr Ward, what you said and what he said.

A Mr Ward said, "You ought to know why," as soon as I began; "You ought to know why I refused my land." I said "I did not. I am here for that purpose, in fact, I am here to arrange to have you see your way clear to take it if you can." He said,"It is ridiculous. My opinion is that your land proposition is no good. Further my opinion of your company is that it is no good and irresponsible." I then said to Mr Ward, "Mr Ward, you are making a pretty broad statement as to that. I think something isn't

(Testimony of Charles F. Fries.)

right here, something wrong, I don't understand." He then went on to tell me, and I asked him then to tell me his experience and he told me he had gone to the Chowchilla office, Chowchilla, California, office, went in and announced himself and asked to be shown the land which had been contracted for and he said he was shown the land. I said, "Did it not appeal to you, Mr. Ward", and he said "Positively not. I can't imagine what you and George (referring to his brother) and the rest of that bunch could think of to sell and buy such land as that". "Why", I said, "Mr Ward, your statements are astounding; I don't understand them," and he said, "You ought to know who you are working for." I said, "Mr I believe I do. Is there any information you can give me further that I should know; I would welcome it", and he said, he continued talking and said he was shown this land, and he asked I believe Mr Palmer in charge, or whoever was in charge, if that was the best land they had to show and they told him yes, and Mr Ward then told me he went over to the hotel and after a while one of the representatives came over to him at the hotel and said, "Mr Ward, we have some better land to show you", and his reply was as I remember, "Now you fellows told me one time you haven't any better land to show and now again you tell me you have something better. I don't know whether to believe you or not," Mr Ward stated after he was persuaded more he finally decided to go out with them and he said

(Testimony of Charles F. Fries.)
he was then shown some land that looked probably pretty good, as I remember it. He however said in conclusion that he decided he would have nothing more to do with it and I believe he went further by saying he had got other information too, which I don't remember the details now, which made him think the sooner he let loose with what he had and sever his contract with the company the better off he would be. I told Mr Ward that if the picture was really as bad as he painted it to me I naturally did not care to work for the company, that all I wanted to do was to confirm what he had to say to me, I would go to Chicago immediately to see that his money was refunded to him *according to him* according to the terms of the contract. "Well," he says, "I don't believe you will do very much. I have already employed an attorney to look after my interest." I think Mr Ward told me that at that time. At least I was very much concerned and immediately took the train to Chicago. That was the substance of my interview with Mr Ward.

When I got back to Chicago I saw Daniel G Hayes and told him what Ward said and that Ward was demanding his money back. He saw I was very much disturbed and told me Mr Ward would receive his money back, not to pay any attention to his statement relative to the land at all; that he was disgruntled and had come in contact with some California man before going to our representative and naturally was

(Testimony of Charles F. Fries.)

approached before he got to the land. I asked him when the money would be returned and he said, "We are in this position at this time. We have our cash resources pretty well exhausted; we have millions of dollars worth of mortgages, and there's a man in New York today trying to dispose of two million dollars worth of mortgages, and that it may be possible in the case of Mr. Ward we will have to take advantage of the clause that permits us ninety days in which to refund the money". I then told him it was important to return the money at once, and he told me he would do all he could to get it back as early as possible. At this conversation were present J. H. Rogers and Thomas J. Sefton and there was quite a bunch there.

I then went home for a couple of weeks. At this time I was hurt in a railway accident and was required to rest for nearly two months during which time I do not recall I sold any land. After I recovered I went back to Chicago to see Hayes. I told him I understood the money had not been paid back and wanted to know when he intended to pay it. He said most any day. He was making arrangements for a good deal of money which was coming from the mortgages which were to be sold in New York by a man named Peake. I told him I was very much disturbed over it and did not feel inclined to work. He told me I had better rest a while and then he had a proposition up in Elgin and wanted me to go there.

(Testimony of Charles F. Fries.)

He said there was a banker there who had a syndicate buying a large tract of land and asked me to go down and see this banker. When I got there I interviewed the banker and found the statements of his proposition were not true. Two salesmen, Mr Loesch and Mr McKee, went out and saw several parties with me and then the office called me up and advised me Mr George Ward was there and wanted to see me. I saw a Mr Fred Nelson out in Illinois and was introduced to him by Mr Loesch. He said Mr Nelson had been to Chowchilla and bought 20 acres. This was in the presence of Nelson. We asked Nelson why he had not bought more land, and he said he had bought about all he could stand until he sold his farm in Illinois. Mr Nelson said it was a beautiful country of opportunity. Our visit resulted in him buying 20 acres more. I afterwards saw Mr Nelson in the office, I think the next day or two. He said that his funds at the bank were exhausted and he was not able to borrow any more money or else was not disposed to. I asked him if he had sold his land in Illinois and he told me no. I then suggested that he trade his land in as he could not sell it. He said he had not thought of that and we finally entered into such a contract, I think for 120 acres more. The office told me it was never consummated, in fact I never received any commission on the transaction. They told me Mr Nelson did not decide to go through with it and I never heard of it any more.

(Testimony of Charles F. Fries.)

When I got back to the Hayes Company I found Mr George Ward had come down there and asked to have his land purchase reduced or his notes back which represented 40 dollars an acre on 300 acres. I went to Mr Hayes about it and he finally agreed to return Mr Ward his notes and I sent the message down to him to that effect. That was in August, 1919.

At that time I told Mr Hayes I wasn't feeling very well and wanted to get home and rest. He then desired me to take a contract to represent them in Minneapolis and that I open an office there. I told him if everything was cleaned up I would do it. I meant by that to have Mr Ward's money returned, and anything else that was hanging fire. There were several other things. He finally submitted a printed report which is dated September 13, which is in the record here. That was submitted before I signed the last contract. In September they gave me a release from all obligation for my commissions received on the E. M. Ward matter.

(Letter of September 6, 1919, Hayes to Fries offered and received in evidence.)

That is the letter received exhonerating me from liability. The gentlemen mentioned in this letter, Mr McElroy, Mr Graves and Mr Bristol, were salesmen operating under me. After I received this letter and a report of the financial condition of the company of September 3, 1919, I entered into another contract with the company.

(Testimony of Charles F. Fries.)

Said contract offered and received in evidence as defendant's Exhibit No. 192, same being dated September 8, 1919.

(THE WITNESS) After receiving this contract I went to Minneapolis. I did not sell any land under it. I prepared for the sale thereof and employed salesmen. I just got my organization working when I was told that Hayes had not paid Ward and did not have all the land he pretended to have. I went to see Hayes and he told me the office was undergoing changes. Mr J. E. Vaughn who had taken half my contract with me, we kept putting the matter of sales off until we were notified November first that our contract was cancelled.

Said letter dated November first, 1919, being a letter from Hayes to Fried, offered and received in evidence as defendant's Exhibit No. 123.

(THE WITNESS) The Hayes company thereafter endeavored to have me go ahead and sell land. I did not sell any. I know a man by the name of George W. Harris. I received the letter which you hand me from him through the mail and the other document which you show me is the answer thereto.

Said letters offered and received as defendant's Exhibit No. 124, same being read to the Commissioner.

(THE WITNESS) Mr Howard Gould is the man who bought land from the Hayes company in the Fall of 1918 who accompanied me on the trip. He

(Testimony of Charles F. Fries.)

subsequently assisted me to sell Mr Raymond Kent. The company he has reference to in this letter is another company that was gotten up there and I represented them for a while. They sold land at Dos Palos north of Fresno.

I was never an officer of the Hayes Company. I never had access to its books nor any voice in the formation of its policies. I never received any compensation for services from the Hayes company other than those mentioned in the contracts mentioned in the record. I was supposed to have received the price of an automobile that was given to salesmen but I never had it.

I have never conspired as alleged in the indictment with any one, two or more or any of the people mentioned therein, to commit any offense against the United States or to defraud any of the class of people stated in the indictment which I hold in my hand. I never knowingly, for the benefit of this corporation or any of the individuals mentioned, make a false statement to any purchaser or person with whom I did business for the Hayes company nor did I knowingly sell land to any person of the class mentioned in the indictment that was not suited for the purpose for which I sold it. I at all times *believes* it was suitable for the purpose for which it was sold.

Referring to page six of the indictment, I did not know about the placing of a letter or circular addressed to one Lewis W. Canby in the mail. I did

(Testimony of Charles F. Fries.)

not at that time know Lewis W. Canby. I did not have anything to do with the mailing or delivering of the circular addressed to Harriet C. Daly, of Marshalltown, Iowa, nor did I know Harriet C. Daly.

I knew nothing about the mailing of the circular described in overt act No. 2. I did not know Louis Rohrssen. My answer is the same as to overt act No. 3. The same applies to all overt acts up to No. 10. I know this man Cahrles Schnoor. He is the Mr Schnoor I met in Chowchilla. I did not mail the letter nor have anything to do with mailing it. I did not sell Mr Schnoor. My answer is the same as to all the overt acts.

MR MOODY: Isn't it a fact, Mr Weisl, on the rest of the counts in the indictment, the charges are based each upon an overt act.

MR WEISL: Yes.

MR MOODY: They are not conspiracy charges?

MR WEISL: That is true.

Q. BY MR MOODY: Did you have anything to do with mailing any of the literature mentioned in the indictment?

A No sir.

Q Or mailing of the same?

A No sir.

MR MOODY: I think that will cover the balance of these counts in as much as they are all overt acts. That is all.

(Testimony of Charles F. Crim.)

CHARLES F. CRIM, called as witness on behalf of plaintiff, sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WEISL:

My occupation is real estate, and farming. I have been a real estate dealer about eight years and have dealt in lands around Madera and Chowchilla. I was raised on a farm and spent most of my life farming, both in Iowa and California. I am familiar with the Chowchilla Ranch since February, 1915. The Chowchilla Ranch contains approximately 108,000 acres. The land located in the Chowchilla Ranch is good soil. I am familiar with the land in the Chowchilla Ranch being sold by the Daniel Hays Co.

Q. What is the condition of the land that was being sold by the Daniel Hays Co. in the Chowchilla Ranch compared with the condition of the soil of the Chowchilla Ranch as a whole? Give your opinion.

Objection.

Objection overruled subject to right to move to strike out later.

THE WITNESS: It is the poorest part of the Ranch as far as I know and can see; a large portion of it is alkali land. Taken as a whole it has a value of $40.00 an acre. I made a personal investigation of lots 775, 776 and 777, Block 43, Mr Gould's land. Lots 775 and 776 were fully 90 per cent alkali; Lot 777 probably 30 per cent. I made an examination of

(Testimony of Charles F. Crim.)

Lot 797 in Block 42, land of Mr. Gruns. It is about 40 per cent alkali, I also examined Lots 794, 795 and 796 owned by Mr. Gruns, which ran about the same. I made an examination of the East half of Block 2 of Subdivision 2. I should think this was between 10 and 15 per cent alkali and the surface of the ground is very rough. I would not consider the land fit for agricultural purposes.

CROSS EXAMINATION

BY MR. MOODY:

I made my examination last year after a long hot, dry summer. I do not mean that the percentage of the soil*d* was 30 per cent alkali but that 30 per cent of the visible surface of the soil showed traces of alkali. I judge alkali as much by the absence of vegetation as by the appearance of any crystals. During or immediately after a rain one would not see the white crystals. After the land had been plowed I think a man who had experience in the judging of soil containing alkali could tell whether it contained alkali. Based upon my lifetime of experience I do not think I would be able to detect it.

Q. Suppose you saw a piece of land plowed up that had been rained upon and was still wet and you were making a trip through that territory for the first time and you drove over the land and didn't get out of the machine, would you be able to determine whether or not it was alkali or hard pan?

A. I would not, no, not unless I saw the hard pan dried up.

(Testimony of William Cardwell.)

WILLIAM CARDWELL, called on behalf of the plaintiff and sworn, testified:

DIRECT EXAMINATION

BY MR. WEISL:

I lived near Chowchilla. I am a farmer principally, but have an interest in the bank there. I own a 1500 acre grain farm located in the town of Chowchilla. I have owned it in the neighborhood of 20 years. I am familiar with the land in the Chowchilla Ranch that the Hayes Company was selling; the part that Mr Cline and Mr Johnston and I went around and looked at one day. It was the portion the Daniel Hayes Co. claimed they had for sale. I found a condition of alkali there; I would say 50 per cent alkali what we went over. This land is not as good as the rest of the ranch.

CROSS EXAMINATION

BY MR. MOODY:

I visited the land in the summer or fall two years ago. The Mr Cline I mentioned was the United States District Attorney at Chicago. He and Mr Johnston asked me to drive them around. If I came here from the East in a territory in which I had never seen alkali, it would be difficult to detect alkali in soil after a rainstorm.

RE-DIRECT EXAMINATION

BY MR. WEISL:

I am familiar with land values in that vicinity; I would say the market value of the land that I examined was about $25 an acre.

(Testimony of Charles F. Crim.)

CHARLES F. CRIM RECALLED

RE-DIRECT EXAMINATION.

I do not know of any person that lived on that land in 1918 or 19 that purchased from the Daniel Hayes Co; I was not there. I have not seen any since who went on their land and farmed it.

CHARLES F. FRIES, the defendant, recalled for further

CROSS EXAMINATION

BY MR WEISL:

Prior to my employment by the Daniel Hayes Co. I was state manager for a life insurance company of Minnesota. I also had a 240 acre farm in St. Paul, Minnesota, which I purchased in 1916. I had never farmed it personally. It was not farmed by any one. It was a wooded farm which I bought to speculate. I had never been engaged in farming operations except in assisting in threshing and hauling grain in Dawson, Minnesota. My father had not been a farmer. I had practically no farm experience. The only The way I sold was in a local way, in Dawson, Minnesota, off and on as occasion presented itself. I was identified in connection with the exchange and transfer of a couple of thousand acres. The average selling price of land was $40 to $50 per acre. It was grain land, fit for raising crops. I had no trouble of a serious nature concerning the sale of land during those years; no complaints, no suits. I had heard of alkali before my connection with the Hayes Com-

(Testimony of Charles F. Fries.)

pany; I had seen some in Minnesota. I can detect alkali, in what I understand it to be in the shape of white crystals, that is the only kind we had back there. The thought never occurred to me to detect alkali by the absence of vegetation. If I saw a piece of land where vegetation was absent I would feel there was some excuse why the cropping had not grown. I would not say it was unfit for vegetation, because that part might not have been seeded. Assuming that there was no growth on the land and grass was growing on the land adjacent around it, I do not know what my particular conclusion would be from my experience prior to entering the employ of the Hayes Company, because I never saw such condition in the East. It might be caused by too much or too little water, improper levelling and that sort of thing. I could detect alkali if I saw the land, in the white crystal, from my experience in dealing with land in Minnesota; and I have also reached the conclusion if I saw a piece of land not growing any vegetation with land surrounding it growing some vegetation, that there was something the matter with that land, either too much or not enough water, some cause.

In 1917 when the insurance business went back I took a 60 days leave of absence to get in touch with the Daniel Hayes Company and through an employee became interested in the Company. I met Mr. Hayes in the year 1918. He was not the first man I met

(Testimony of Charles F. Fries.)

connected with the company. The first man was John Day. He was district manager in Waterloo. I met him in Waterloo the first few days in January, 1918. I told him I was there to speak to him and go to work selling their stock that Mr. Perkins told me about. He said it would be necessary to go to the head office at Rock Island. I met Mr. Sefton and Mr. Carter in the head office. One of them was sales manager and I afterwards found out that Mr. Carter was temporary sales manager. They told me the Hayes Company had been instrumental in developing a great part of Iowa and had been instrumental in developing the Twin Falls project. They told me that the Hayes Company had developed the work in Twin Falls. I did not find out it was not a success; I do not know it now. I had been there and saw it. I did not find out in the course of my employment with the Chowchilla project that it had been organized for the purpose of transferring certain dissatisfied holders of land in the Twin Falls project to land in Chowchilla. I do not know that now. And these men told me the United States Farm Land Company had gotten a certain number of settlers together and they told me of all the things that had been actually worked out from time to time after years of experience, and explained that they had three or four hundred actual settlers which the United States Farm Land Company had secured; they held 108,000 acres in the Chowchilla ranch; that they had the whole land for

(Testimony of Charles F. Fries.)

sale outside of what had been consumed by these actual settlers. They told me that in June, 1918. That is the first time I heard details of the California proposition. The first time I had heard that the Hayes Company owned 108,000 acres of land on the Chowchilla ranch was in April or May, 1918 Prior to that time I was selling stock for the Hayes Company and at that time they were just finishing the remnant of the western proposition—the Idaho proposition and preparing for the big California proposition. I don't remember all the things I told them, the stockholders, during the three months I sold stock, concerning the holdings of the Daniel Hayes company. I told them they were identified with different projects in the west. I showed them this (Indicating Exhibit 4). They presented that kit to me in January, 1918. I won't say I read it carefully. The pictures and letters were put in subsequently. At this time it is not in my mind exactly what I had been told the Daniel Hayes Company held. I was not particularly concerned in the stock because the Hayes Company guaranteed all stockholders by reason of placing mortgages with a trust company, which in turn authenticated the stock certificates. I naturally therefore did not take pains to see what their holdings were at that time. Their stock was authenticated with securities binding it. I understood the company was to take over some land in California. I heard that in April or May, 1918. My understanding concerning

(Testimony of Charles F. Fries.)

the stock was that it was 8 per cent preferred stock. The Hayes company had previously paid 12%, making 20% in total. The preferred stock was taken care of first by the payment of 8% each year on the common; then the common participated only to the extent of 8%, and afterwards share and share alike. My understanding as to the source of their dividends was reclaiming lands under the Carey Act and different irrigation work in the west. My first understanding was that it was a company for the purpose of reclaiming and irrigating land, handling and irrigating land in the west.

I first sold stock at Independence, Iowa. I only sold one man there. I have forgotten his name. Then I sold in Aurora, Iowa, to W. L. Frye and a Mr. Berryman. I don't believe I can recall the rest of the names.

Q I will ask you if certain people held stock in the company: Did Mr. Gould hold any stock, purchased from you?

A What town?

Q Larrabee, I believe.

A I don't—not from me, no, sir.

Q Did Mr. Harris own any stock?

A Not that he purchased from me, no, sir.

Q Did Mr. George Ward purchase any stock?

A Not from me.

Q Did Mr. Freerk purchase any stock?

A Mr. Freerk purchased stock from me.

(Testimony of Charles F. Fries.)

THE WITNESS: In the latter part of May 1918 I was told I could not sell any more stock; that I would have to sell land if I remained with the company. It was my understanding that the people who bought stock would receive dividends from the earnings of the company, not from any particular source. I understood that the profits came partly from the sale of Chowchilla lands. I presume it would have been the natural thing for me to have told the stockholders that the greater number of acres of land sold by the company in Chowchilla would mean greater dividends. The instructions to the salesmen were to sell stock to certain persons with a view of encouraging those persons to encourage other persons in the community to buy land in the Hayes Company. These were the instructions I followed. These stockholders got a commission on the land that was sold in their communities. First there was $5 per acre to be distributed in the community, based on a dollar per one hundred shares of stock. If five men held a hundred shares of stock, they were supposed to receive one dollar per acre on all land sold by the Hayes Company in their community. In addition to that the agent had a contract paying him $10, $15 or $20 per acre and he was privileged to pay any one that would help him; - he was to pay out of his own money. I followed that practice in nearly all instances. The standard was to give the party $5 per acre. That was paid out of my earnings. My first contract gave

(Testimony of Charles F. Fries.)

me $20 per acre. I gave $5 to some one who assisted me, a local man, a banker or agent and $5 to stockholders was to come from the home office. That did not come out of my commission. The stockholders were limited to receiving $5 per acre. I went seven or eight months on a basis of $20 per acre and after that it was $25 per acre and after that $50 per acre, which was the highest I ever received. There was an allowance for discount which might run as high as $55. per acre.

As I said, I was told in April or May that the Hayes Company had title to and owned 108,000 acres of land. I believed that to be true. I did not pay much attention to it because I did not have any idea of selling land. I began selling land in 1918. At that time I believed they owned 108,000 acres. I believed and represented to stockholders that it was worth $200 per acre. I represented through the literature of the United States Farm Land Company that the Hayes Company was selling it for $200 per acre; that it was worth $400 to $500 per acre. I sincerely believed that they owned 108,000 acres of land, worth at least $200 per acre. I never gave it a thought as to whether they had title to 108,000 acres. I told purchasers that the Hayes Company owned 108,000 acres. It was my belief and understanding that the title was clear.

Q I show you defendant's exhibit No. 26, which you testified you received from the Daniel Hayes Company in July 1918, *f*efore you began selling land for

(Testimony of Charles F. Fries.)

that company, and which purports to be a financial statement of the Daniel Hayes Company, and which financial statement shows that the assets in real property, real estate and equities and improvements on real estate, amount to $391,058. (Handing paper to witness). Will you look at that. Now you say that statement and you relied on it?

A Yes, sir.

As to how they held the land never occurred to me. I have a common school education. I went to school, including two years in high school. I am familiar with subtraction and addition.

Q In other words, you know that, in round numbers, $391,000 or say $400,000, divided by $200, amounts to $2000; so that if that statement be true the holdings of the Daniel Hayes Company could not be more than 2000 acres if you believed that the land was worth $200 an acre. That is true, is it not?

A Yes.

I represented to Mr. Ward and Mr. Nelson that the Hayes Company owned 108,000 acres of land in Chowchilla. The first purchase of land in Chowchilla was from Mr. George Ward, I believe, in July 1918. I met him at Pringhar, Iowa. I don't recall how I met him, perhaps through the hotel proprietor or banker. The only person I saw there was George Ward. I showed him my book and a map and told him this company had this great tract of land. At this time the book contained these exhibits. I told

(Testimony of Charles F. Fries.)

him the possibilities of alfalfa raising. I showed him the Robertson Boulevard; that there were farms along the boulevard; that if he would raise alfalfa on that place it ought to be worth a great deal of money. I showed him the company's literature and he purchased on the basis of the conversation and literature I showed him. I don't remember whether I told him the company owned 108,000 acres; I told him the company was selling this 108,000; it was my understanding that they owned it at the time. I do not know whether I told him anything about the holdings of the company outside of its land holdings. It was my understanding at the time that the company owned the Hayes Hotel Building in Chicago. I could not say when I first found out that they did not own it. I do not recall whether it was before or after. I started selling the land. I don't believe that I represented to purchasers of the Hayes Company that the Hayes Company owned the Hayes Building. I always referred to it as the Daniel Hayes Building, however. It is probably a fact that I made that statement to Mr. Ward, I don't know. It may be that I made that statement to Mr. Nelson. I know where the Chowchilla Hotel is located. It was not my understanding that it was owned by the company. I do not know of any bank owned by the company. It is absolutely not a fact that I represented to customers that the company owned a building in Chicago and a hotel in Chowchilla. It is absolutely not a fact that I made these representations to Mr. Ward and Mr. Nelson.

(Testimony of Charles F. Fries.)

A I went to Chowchilla to make an examination in the fall or winter of 1918; I had probably sold 300 or 400 acres. It might be closer to 1,000 than 500. At that time I was receiving $20 per acre. I paid my own expenses and gave people $5 per acre for helping me. It amounted to about 5% for helping me. I gave George W. Harris at Paulina 5%. I sold probably 120 or 150 there through Mr. Harris. I don't remember how much commission I gave to Mr. Harris. It was undoubtedly more than $200. Mr. Harris was one of the men that accompanied me on my trip to California in December. He may have been one of the men who sent the telegrams. I do not remember whether he did. I do not remember how much land he purchased. I have a partial list of the land sold. It shows here that he bought a total of 79 acres. He didn't contract before he saw the land. He bought one piece afterwards. He paid for it half with notes. I do not know whether he ever received a deed for the land. I was told by parties that they had received deeds. I do not remember the names.

"Q BY MR. WEISL: I call your attention now to a provision in defendant's exhibit No. 119, which is the contract that you had with Mr. Ward, or that the Daniel Hayes Company had with Mr. Ward, for the purchase of land, and on which he has paid $32,400 cash, according to the terms of the contract. According to the contract "Upon the payment in cash of said $32,400, the company will cause to be delivered to the

(Testimony of Charles F. Fries.)

purchaser a good and sufficient warranty deed with certificate of title made by the Madera Abstract Company showing a good merchantable title to the land, and the purchaser, upon receipt of said deed and certificate of title, will execute and deliver to the company said note for $32,400, secured by real estate purchase money mortgage on said land." Now do you know of a single instance where a deed was delivered to a person who contracted in this manner for land in the Daniel Hayes Company and fulfilled the terms of his contract?

A Why there were many cases."

I can't remember the names, but I have seen many deeds going out of the Deed Department to a number of people.

According to this statement I have here I sold personally ten or twelve men. I can't name one of the ten or twelve men that received deeds from the Hayes Company. I WAS ASKED BY MR. Freerks why the deeds were not forthcoming. He purchased in 1919, and he bought some as far back as August 1918. I do not know whether he ever received his deed. He complied with the conditions of his contract. He asked me when the deeds would be forthcoming, probably two months after I sold him the land. I told him it was suspended in the office, that they had some title they were clearing up and they wanted to get some signature on the title before they put the deeds out. I do not recall whose signature; the matter was out of

(Testimony of Charles F. Fries.)

my hands; I had nothing to do with it and I could not keep track of the deeds. It seemed a rather strange method of doing business. I continued making representations that the company would *delivered* the deeds according to the contract, because I believed explicitly in the Hayes Company and that they would do all they said. I saw the deeds going out of the office to the different parties from the Deed Department from time to time. Unfortunately I can't tell you any of the names now.

Mr. Gould and Mr. Hayes were in that party that went to California with me. I believe there was a man by the name of Dick Gray in that party. He was from Larrabee, Iowa. Mr. Harris and Mr. Gray were from Paulina. Dick Gray was not along with me when we went out to see the land. He was not there for the purpose of purchasing the land. He did not purchase any. All my people made contracts to purchase before they went out. Mr. Gould was a stockholder in the original Daniel Hayes Company. I do not believe Larrabee had a quota or 500 shares. I do not know what stock was there. I sold none.

(Document marked Government's Exhibit 1 for identification). Paper handed to witness.

A That is not a stock certificate; it is a special guaranty fund certificate.

In order to get a special guaranty fund certificate a person would have to be a stockholder. In order to get one of these certificates a person had to own 500

(Testimony of Charles F. Fries.)

shares of stock. I have seen that certificate before. That certificate purports to be issued to Mr. Gould, the same Mr. Gould I have referred to.

(Document admitted in evidence as Government's Exhibit No. 1).

I do not know how much land Mr. Gould received from the Hayes Company. I do not know that I sold any land in his district except to him. He would be allowed $5 per acre on his own land if he held the stock. It is true that if persons in a certain community held shares of stock they would be entitled to $5 per acre for every acre of land sold in that community. I should think their dividends depended upon the amount of stock, to a certain extent.

Mr. Gray was an acquaintance of Mr. Gould or Mr. Hayes. He rode all the way from Larrabee out. He was a banker at Larrabee, Iowa. I do not think he owns any stock. The lease indicates that Mr. Gray did have stock. When we got to Chowchilla we met Mr. E. B. Smith. He was an officer and acting as escort over the land. We later met Mr. Schmoll, who acted in the same capacity. He was presumed to be an expert in handling California land, irrigating work and that sort of thing. Mr. Schmoll told us the same as all, that it was very good land and big possibilities there. I do not know in particular what he said about the value of the land. He took us out at that time and Mr. Smith took us out. I should imagine I spent three or four hours with Mr. Schmoll. We went over

(Testimony of Charles F. Fries.)

the land in a machine. He said the soil was good. I do not recall all that he said. He said that the soil would grow alfalfa, grain and different things. He took us over to a Mr. Smith, known as Hog Smith, a farmer. He told us he could make more money there on ten acres than could be made in Iowa on a quarter section. He was one of the settlers there. This was on the Chowchilla Ranch. He bought from the United States Farm Company. I testified that the Hayes Company owned the ranch. The United States Farm Company did the preliminary work for the Hayes Company, the actual settlers there. Smith's land was on the east side of the boulevard there, probably a mile. I am lost as to distances. I would not be able to say. On my examination of the land that day I detected no alkali or hardpan. I noticed considerable absence of vegetation. Most of the land was plowed and being prepared for seed at that time - - that is what I mean by absence of vegetation. All of the land was not plowed or growing something. The land Mr. Gould bought was plowed and I think the same with the land that Mr. Harris bought. We all walked over that land. Nothing was said about alkali at that time. Mr. Palmer, at the time we went back toward the office said "There is no alkali in this land of any consequence, in fact if vou should discover it should be a kind of saltine substance it would be more favorable to the land than unfavorable." I had never heard about this saltine substance, but I took

(Testimony of Charles F. Fries.)

Mr. Palmer's statement for granted. I knew white alkali when I saw it and had seen some in Minnesota where I had been dealing in land. I want you to believe that when I knew what alkali was - - I did not know its effect on crops. I generally understood it to be if it was there in too large quantities it might be harmful to the crops. I do not remember whether Mr. Gould or Mr. Harris mentioned anything about alkali. I would not say they did not. I did not see any alkali on that land. I got to Chowchilla at four o'clock in the afternoon and left the next day at probably the same time. Mr. John Hermon also said the land was good. We had another man in the Hayes employ; I think the man that plowed the land for the Hayes Company; I did not know that at the time.

At this time an adjournment was taken to November 8, 1921, at 11 A. M.

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November 8, 1921, 11 A. M..

Appearances as before noted.

CHARLES F. FRIES resumes stand for further cross-examination.

I made the statement that George Ward was the first man sold. I find by looking at my records that I was mistaken. Mr. Klinkenborg, George, Iowa, was the first one. He dealt in lands, a resident of George, Iowa. He may have purchased ten or twenty shares of stock in the Hayes Company. There was not 20 shares of stock in George, Iowa. He assisted me in

(Testimony of Charles F. Fries.)

selling land in George, Iowa. He received a commission on a basis of $5 per acre. I sold about 100 acres through his assistance and Mr. Freeaks. Mr. Freeaks was president of the George Savings Bank. Mr. Klinkenborg did not get credit for the sales of George Ward or E. M. Ward. George Ward got commission on the sales of E. M. Ward. He received a commission of $5 per acre. He received a commission of $5 per acre, $1620. The commission was never to my knowledge turned back to the company after E. M. Ward had rejected the land. I do not recall exactly what I received a*d* commission on the Ward deal. My brother handled the allowances. We paid Mr. George Ward $1,000 for the trip to California. That was taken out of my commission. The net amount of the commission was $7,000, or a little over. I never turned that back to the company, despite the fact that Mr. Ward had cancelled his purchase of land within the required 90 days. It was my understanding that I was released from any liability concerning the resale of that land. I know lots of men who were paid their commissions first and did not pay them back. It was understood the agent would pay the commission back or sell an equal acreage without commission.

"Q And in this particular instance you say you received your commission without any liability to resell that land or other land in its place?

A That was an agreement reached between Mr. Hayes and I. If you will permit me to explain it.

(Testimony of Charles F. Fries.)

Q Certainly I will permit you to explain.

A I had previously sold a majority of my land at $20. an acre and when you pay $5 per acre commission out of that and $5 an acre discount on notes and expenses, it leaves you about $10 an acre or 5 per cent - -

Q You testified - -

MR. MOODY: Let him finish his answer.

THE COMMISSIONER: Finish your answer.

A (Continuing) on the amount of the sale.

Q BY MR. WEISL: You testified, didn't you, Mr. Fries, that your net commission on the 124 acres sold to Mr. Ward amounted to $7,000?

A At that time my contract was higher, but I was going to get to this point. I discovered Mr. Hayes had been paying other men a larger commission than I had received on earlier contracts, and I also called Mr. Hayes' attention to the fact that I had staid in the office and helped other men on the proposition, and when I called Mr. Hayes' attention to all these things, he appreciated the fact that my contract had not been large enough to start with, and he gave me this letter, which is a certain exhibit here, which shows in consideration for services performed, and so forth, outside of the regular contract, due to the fact that I worked for such a small percentage first, he would waive the possibility of reselling this land that was sold to Mr. E. M. Ward. He gave this letter to me and to my brother."

(Testimony of Charles F. Fries.)

The consideration which I gave for this release was that from time to time I would have to go to Chicago and explain to new salesmen coming on. After that I would say that I spent 20 days. I got $7,000 oit of the Ward deal and my brother an equal amount. Mr. Hayes also took into consideration that my contract was too low and I was not getting equally as much as other salesmen. Some of the others were getting $35 while I was getting only $20. That did not raise my suspicion as to the integrity of the company because I had employed salesmen before. I had my contract and they ranged anywhere from 20 to 70 per cent on life insurance. That is the only case of a personal sale where I was permitted to keep the commission after the contract was cancelled. I was also released from sales made by McElroy, L. N. Graves and L. Bristol, while these gentlemen were under me. These gentlemen had some rejections and did not make good to the Hayes Company. I desired to be relieved from them. I explained to Mr. Hayes that these men were out there and money advanced from time to time, $50 and $100 to pay expenses and I asked him to be released on that. I was never reimbursed by the Hayes Company for money advanced to them working under me. In the case of Mr. Bristol I did not receive any commission. In the case of Mr. McElroy I received $15 per acre; he received $35. He made the sale to Mr. Bruns, August Bruns and John Bruns - John Bruns 57 acres and August Bruns 40 acres.

(Testimony of Charles F. Fries.)

Neither of these gentlemen had rejected the land within the 90 days, to my knowledge. When I asked Mr. Hayes to relieve *my* from responsibility respecting the sale to these men I had in mind such sales as they had made. I had received a complaint on E. H. McElroy, that he had made representations and that he had promised to resell the land. Mr. Freerks or Mr. Klinkenberg came to me and said they made that statement which was not proper and I wanted to be relieved of what those men had done. So far as I can remember I received only commissions on August and John Bruns and on McElroy sales. They were located in the George District at George, Iowa. Mr. Graves sold to Mr. John and Joseph Johnston near George. Mr. Johnston, I do not remember whether he exactly cancelled his contract. He said he did not want the land. He said it was too far from home. He gave no other reason except that he told Mr. Graves was indecent out there and did not treat him right. He said he would reject the land, 40 acres. Mr. Graves also sold to Mr. Mellenma 120 acres on which he received $15 per acre. That sale had not been cancelled and there was no complaint. There was a sale by Graves and Bristol to C. R. Kent of 80 acres. I did not receive $15 per acre on that. Mr. Bristol was an old friend of mine. Mr. Harris was also an agent there, that is, George W. Harris. He received $5 per acre. Part of that was taken out of what I would receive nominally. I received $8 to

(Testimony of Charles F. Fries.)

$10 per acre. Mr. Bristol made a sale to Hessel Roorder, 19 acres. Mr. Bristol told me that he wanted a rejection, but he did not comply with the terms of the contract. He said he got homesick when he got there. I was present when the contract was signed. I helped close the deal. I had the same conversation that I had with most any sale that you made. Mr. Bristol had a number of talks with the Roorders' previous to the day of my going over. They were told we had some good alfalfa land to sell. We were trying to sell them land for alfalfa and showed them the possibilities.

In 1918, when I visited Chowchilla, I believed the Hayes Company owned 108,000 acres of land. I can't recall how long I continued in that belief, but I received statements that made me believe that they did not own the land. These statements were made before I left the Hayes Company, probably in September 1919, by Lee Oehlinger of Minneapolis. He told me lots of things about the Hayes Company. He was one of the salesmen and had also been out to Chowchilla as chief manager for the Hayes Company. He told me that the Hayes Company had sold that land on contract and had sold the best part of it and what was left was not good and it was time to get away from it. I did not sell any more land after that. I did not try to sell any more land. I had no agents under me selling land. I did not draw a salary from them. I did not draw any expenses

(Testimony of Charles F. Fries.)

from them. I had started to enlist salesmen to develope the Minnesota territory and was getting along with it pretty well; we got that information from Mr. Oehlinger and Mr. Dexter. We were to develop this territory for the Hayes Company. After September, 1919, I made no endeavor to sell land because I was in doubt about the Hayes Company.

(Telegram identified by the witness as having been sent to Hayes Company offered and received as Government's Exhibit No. 2.)

Original contract between Nelson and Daniel Hayes Company signed by Fries on behalf of the Hayes Company identified by witness, offered and received as Government's Exhibit No. 3.)

It is true I rented office space in Minneapolis in behalf of the Hayes Company.

The copy of the letter marked Government's Exhibit 4 for identification is the letter to me by the Hayes Company.

Said letter offered and received as Government's Exhibit 4.

THE WITNESS: After my visit to Chowchilla I proceeded to Iowa and proceeded to sell land. Between my first and second visit I sold land to George and E. M. Ward. George Ward asked us to go to Sioux City with him to see his brother, that he was sure his brother would buy some of this land. George Ward bought in December, 1918. I do not believe he went to Chowchilla to see the land he had purchased. He had never been to Chowchilla with me until Feb-

(Testimony of Charles F. Fries.)

ruary, 1919. Before going there he had contracted for the purchase of some land, 57 acres. He accompanied me to Chowchilla to inspect this land. I believe he kept the original piece he contracted for. I do not remember that he made any complaint about it. I made one sale to George Ward and my brother made one to him. Then both of us were together and he bought another piece, the half of Section 2, 24 acres. His brother bought the other half adjoining it. I do not remember any exchange made by Mr. Ward in his parcels of land. Mr. George Ward was a stockholder owning, I think, 100 shares. He was entitled to $1. per acre. He also received $5 per acre sold through his assistants. On the 324 acres sold to his brother George Ward received $5 per acre commission. I first met George Ward in Sioux City, Iowa, in January, 1919. His brother said "My brother is alive to the opportunity of making money, or anything that is good"; he said he was well connected and was worth a good deal more than he was and he thought the proposition would appeal to him. This was before my second visit to Chowchilla. I do not believe George Ward had seen any of the land yet. When I met E. M. Ward I took my kit (Exhibit 4) and told him all the things that the Daniel Hayes Company had done in the past, showed him their statements, literature, letters of recommendations in the Chicago Herald and told him they were the biggest proposition, and that the crowning victory of their

(Testimony of Charles F. Fries.)

efforts was the California proposition. I told him this was land upon which you could raise alfalfa and showed him the returns; showed him it was double crop land and he could figure out the returns that were possible. I could not have told him I had personally been over every foot of the land. I might have told him that I was familiar with the character of the soil personally. I did not tell him I had made a personal examination of the soil and found it to be some of the best in California. I had not been over that land personally, every foot of it and observed it carefully. I first contracted to sell Mr. E. M. Ward 324 acres. I took the notes from Mr. Ward, half payment, amounting to $32,400. There was deducted Mr. Ward's and his wife's expenses, $1,000. I paid his expenses in advance. That was not the custom with the Hayes Company but it was optional with the sales agent. I personally advanced that money and was not reimbursed by the Hayes Company. I did not handle the notes. My brother handled them. I saw the notes and was present when they were delivered. The purchase price was $32,400 and deducting $1,000 left $31,400 of notes. The agreement with Mr. Ward regarding the discounting of the notes was that they were to be discounted immediately. We had previously made a contract with Mr. Ward and we had then agreed not to discount the notes and would hold them personally with us to Chowchilla. My brother retained the notes and made no

(Testimony of Charles F. Fries.)

effort to discount them. When we came back from Chowchilla the company was calling upon us for settlement of the Ward deal. We then went to E. M. Ward and told him we must have a settlement by discounting them or the money. He then said he would get us the money, and not being able to make arrangements he gave us his notes which we discounted. It is not true that we had discounted a note for $6400 prior to telling Mr. Ward about it. I was satisfied and believed sincerely that the land we were selling to him was worth $200 per acre, and that if he went to see it he would be satisfied.

(Letter from Fries to Hayes introduced as Government's Exhibit 5.)

"Q. What *possibly* objection did you have to a man who had purchased 324 acres of land and gave notes to the extent of $31,400 to go out on that land alone to look at it?

A Because there were many agents on the trains taking the Daniel Hayes prospects from time to time, poisoning their minds in different manners and trying to get them over on their lands. It seemed to me that it was absolutely necessary that a man be accompanied to the extent at least of not having some one else interfering with the sale of land to a prospective purchaser."

I used the expression I was humiliated.

(Letter from Fries to Hayes introduced as Government's Exhibit No. 6.)

(Testimony of Charles F. Fries.)

(Letter from Fries to Hayes introduced as Government's Exhibit No. 7.)

Mr. Ward told me that in his opinion the land that we had picked out was no good; that he could not account for the fact that it had appealed to George and all the rest of the party; that he told them if that was the best land they had they could not do business with him, after which he went to the Hotel, and then one of the representatives came over to him and said they had some land which they thought would appeal to him; that he did not know whether to believe them or not and he thought they were irresponsible; that he did condescend to go out with them again and they showed him land which he thought better of; that he sized up the situation and finally determined that he would have nothing to do with it. I do not remember that he told me anything specifically the trouble with the land. He might have said something about alkali, but I don't remember.

"Q Is it not a fact that he told you that that land was as spotted as *a* adder with alkali?

A I believe it to be a fact that that land is not spotted.

Q Did you see the land? . .

A Yes, sir."

(THE WITNESS) I saw the land in company with Reverend Kennedy, George Ward and Mr. Schnoor. The Reverend Kennedy is of Gaza, Iowa. I looked at the land and saw no alkali or hard-pan.

(Testimony of Charles F. Fries.)

The land had not been plowed. I do not think there was any vegetation on it. I did not see any crystals of alkali. I would not know what hard-pan was. I noticed elevations which were explained to us by Gerald Hayes as hummocky, or something of that sort. Mr. Ward knew the facts and asked Mr. L. L. Palmer about the land, and he said that these spots indicated very fine land. I believed that to be true. Mr. Palmer was an eloquent speaker and used a lot of scientific terms which I did not know.

"Q BY MR. WEISL: Isn't it a fact that Mr. Ward told you that the land was as spotted as an adder with alkali that it was full of hard-pan and that you couldn't grow sage brush on it, and that you said 'Well, if that is true I will get out of the company myself'.

A I made that remark to Mr. Ward, but as to the other I don't know if I said it."

Q If you were told that statement did you have any reason to douby Mr. E. M. Ward's statement about the condition of that land?

A Yes sir.

Q What was your reason?

A One reason was that Mr. Rhodes of Sioux City, Iowa, according to his statement sold Mr. Ward $20,000 worth of Casualty Bonding stock, and he came to me after I had sold Mr. Ward, my brother and I had sold the land and apparently he was peeved about it and he said Mr. Ward has a right to reject

(Testimony of Charles F. Fries.)

that land and I am going to see that he has."

THE WITNESS: Mr. Ward rejected the land and I do not know that he was ever paid his money back. After the Ward deal I knew that the land was not as represented. After that I sold to Mr. Nelson. I owned 60 acres at one time. At the time I met Mr. Nelson I had 120 acres. I had a contract for it. I had turned in 167 shares of stock on it - Hayes stock. I had paid $7 for some of it, a part of it $8 and a part was given to me on commission. When a purchaser desired to turn in stock on the land it was taken in by the company. The Hayes Company credited me $10 per share.

(THE WITNESS) If I was so told I had reason to doubt Mr Ward's statement because R. W. Rhodes, of Sioux City, Iowa, had sold Mr Ward $20,000 worth of Casualty Bonding stock and after my brother and I had sold him this land Rhodes was peeved about it and said Ward had a right to reject the land and "I am going to see that he does." He did reject it. To my knowledge his money was not paid back. After the Ward deal I sold to Mr Nelson who is sitting in the Court room. I owned 60 acres at one time. At the time I met Nelson I owned 120 acres. I had no deed, a contract. I turned in 167 shares of Hayes stock on it for which I paid $7.00 a share on some of it and $8.00 a share on some of it, and part was given me as commission. The Hayes company cred-

(Testimony of Charles F. Fries.)

ited me at the rate of $10.00 a share and the balance I paid out of my commissions.

At this point a recess was taken until 1:30 P. M.

1:30 P. M. (The same day.)

CHARLES F. FRIES

Resumes the witness stand for further

CROSS EXAMINATION.

(THE WITNESS) I never received a deed for my 120 acres. I never asked for it. I had an argument with them over it in October or November. I did not farm the land or have any one farm it for me. I did not represent to purchasers that I had 640 acres and particularly not to Mr Nelson. I met Mr Nelson through Mr McKee or Mr Loesch in August or September of 1919. Mr Nelson said he had been out to the property. He thought there were great possibilities there; that he wished he could go out there immediately but wanted to sell his whole place before he did. I don't remember what I told him about that particular tract I was offering him for sale. I don't remember whether I had ever gone over it or not. I did not tell him that from an inspection of that particular land I had reached the conclusion as a land expert that it was the best land in California, fit for growing barley and alfalfa. I told him that Mr Hayes was going to advance the land to $250 or $300 an acre. I did not tell him that I would resell it. Thomas J. Sefton, the sales manager told me the land would be raised to $250 or $300

(Testimony of Charles F. Fries.)

an acre. I did not have an opportunity to make an additional investigation of the land after the conversation with E. M. Ward in which he told me the land was not as represented and the time I sold Mr Nelson. I did go to Mr Daniel Hayes and Mr Bennett. Mr Bennett was a soil expert in the employ of the Hayes Company. These inquiries I made before I made a connection with the company. After Mr Ward's statement I went to Mr Hayes, Mr Sefton, Mr Rogers and Mr Bennett and salesmen whose names I cannot recall. Everything was going very rapidly and there were always a group of salesmen there and I would make inquiries from every possible party as to whether Mr Ward's statements were true or not. I made no inquiries of experts on soil who were not connected with the company.

Mr Nelson had a farm under contract 160 acres and he told me if he sold that he would buy additional acreage. I did not tell him he would have to deposit $500 to make good his contract and if he did not live up to the promise he would forfeit the money.

I recall a meeting in Elgin in October, 1919, when several farmers were present. I did not make a statement at that meeting that Government experts had examined the land and reported it to be in A 1 shape. I did not refer to Government experts. I said expert engineers. I do not know any Government experts who examined the land. I referred

(Testimony of Charles F. Fries.)

to the expert opinion of one McPherson whose report I had there. I don't remember that I was introduced as a land expert. If I had been I would say the introduction would be ridiculous. I had nothing to do with the sale of that farm. I remember Mr Glen Russell.

Q I will show you this writing which I will ask to have marked Government's Exhibit No. 8 for identification, and ask you if that is a correct copy of a letter that you sent to Mr Glen Russell.

MR HARRIS: What is the date of that?

MR WEISL: September 11, 1919.

A That letter was perhaps written by me. I had forgotten it.

Q BY MR WEISL: Will you say that it was not?

A I never remember writing it.

Letter offered and received as Government's Exhibit No. 8.

(THE WITNESS) The purchasers of land from me who sent telegrams were Mr George Ward, Mr E. M. Freerks, Mr Enno Klinkenberg, Mr H. W. Gould, perhaps others. They were all stockholders in the Hayes Company that I have mentioned. Mr. Klinkenberg received $5.00 an acre on the sale of certain lands. Mr. George Ward also. Mr Freerks did not until the last few sales. Mr Gould did not. I think he held 100 shares of stock. I never sold him any stock so I don't know what he had. The

(Testimony of Charles F. Fries.)

Rev. Kennedy was also there and he did not have any stock in the company. He received no commissions. It was suggested to all parties to make an expression to the company as to what they saw and what they believed as to possibilities in Chowchilla. As far as I know the person sending them wrote them; perhaps the company paid for them. I know of no instance where a telegram was sent without the permission of the purported sender.

Government Exhibit No. 9 identified by the witness, offered and received in evidence.

(THE WITNESS) I do not know what the words "wires out tomorrow" refers to therein.

Government's Exhibit No. 10 offered and received in evidence, being a telegram to Fries.

(THE WITNESS) The $5,000 referred to in this is this, - - - they asked me to take a certain portion of this fund and I had agreed with Mr Hayes I would send $5,000 if it would help them any in this new composition purpose which I did not understand exactly and don't understand yet. In a letter dated December 30, 1919, addressed to George W. Harris I Istated I was suspicious of the company and had left the company. I was simply going to give this $5,000 as a token of the regard which I had for Mr Hayes who I thought at the itme had been very much taken advantage of; that he had been fooled on his land contracts; that there were leaks in his office and improper things had been done. For instance, a $2,000 certificate of

(Testimony of Charles F. Fries.)

deposit had been discounted and $300 cashed by Mr Benson, the Comptroller. Salesmen were talking about Mr Rogers having been responsible for lots of the trouble and men had undermined the workings of the office. Different salesmen had not paid back money or re-sold land and money had been advanced to some who had not gone to work at all. I intended at that time to do this out of sympathy, but I did not go through with my intentions.

Telegram received by Fries from Hayes Company concerning Nelson deal offered and received as Government's Exhibit No. 11.

Letter from Fries to Hayes compan*t* offered and received as Government's Exhibit No. 12.

Reply to Exhibit No. 12 offered and received as Government's Exhibit No. 13.

(THE WITNESS) I don't remember receiving this because I saw no correspondence after the cancellation of the contract on November 1st. Mr Vaughn, my partner in the business in Minneapolis, handled most of the correspondence. My assistant Mr McElroy sold some land to Mr. John Brunss. I had a conversation with Mr Brunes. I said, "Mr Brunes, you have purchased two 19 acre tracts from us, from our representative, Mr E. H. McElroy. There is another 19 acre tract adjoining these two 19 acre tracts which you should take. You have purchased 38 acres, and as I am informed as to your responsibility you are able to buy more land, and it occurs

(Testimony of Charles F. Fries.)

to me that if you take this additional 19 acres that you will be pleased with yourself for having taken it, and if you take it that will give you 57 acres if you buy it at this time", and Mr Brunes said he would go to the bank with me and finally decided to take that 19 acres.

Q Mr Brunes bought a 19 acre tract and 57 acre tract through you.

A Oh, did he?

Q I show you contracts which I will ask to have marked Government's Exhibits Nos. 13 and 14 for identification, and ask you if those are the contracts made with your signature affixed thereto in behalf of the Daniel Hayes Company.

A No sir. Those are Mr McElroy's signatures and myself as a witness. There's a mistake. I think I was a witness to that. I was there.

Q Is that your signature?

A Yes. 19 acres more than I had in my mind had been sold to Mr. Nelson.

Contracts with Mr Brunes offered and received as Government's Exhibits 13 and 14.

(THE WITNESS) I had seen the land sold to Mr Brunes; I did not notice any alkali on it. I don't remember whether it was plowed. I know Mr Frank Justin of McHenryville, Ill. I assisted Mr McKee or Mr Loesch in selling him land. I believe he bought 40 acres. I believe I was allowed $20 per acre. The commission was $40 and the salesman got half of that.

(Testimony of Charles F. Fries.)

I don't know Charles J. Payne of Brewster, Minn. I know where Brewster, Minn., is. I know of Mr Payne but I don't remember meeting him. I did not have anything to do with selling him land to the amount of $8,018, half payment but I can tell you about that transaction. Mr J. E. Vaughn, my partner, sold it. Mr Payne had bought 40 acres of land on some previous occasion and this in some way was substituted for that sale or had something to do with it. I don't know the details. I went to the Hayes office with Mr Payne's contract. Mr Vaughn was my partner and half of what he got went to the office there. This was some time before November first when our contract was cancelled, I think. Mr Vaughn may have done it later, I don't know.

RE DIRECT EXAMINATION

BY MR MOODY:

(THE WITNESS) Government Exhibit No 2 was sent in answer to Government Exhibit No. 11 by me. In reference to Exhibit No 3 which bears date the 3rd of October and has an approval date of the 21st, I don't remember whether that approval was put on there at that time when I went down there in response to the telegram. I imagine the contract was actually signed the date it bears, the 3rd of October. I don't remember how long the Nelson deal had been hanging fire previous to October 3rd. Besides Mr Ward's statements up to the time I sold Mr Nelson the 20 acres I had heard derrogatory statements by Mr.

(Testimony of Charles F. Fries.)

Joseph Johnston of George Iowa. He was the man I referred to as being homesick. No one else had told me anything derogatory at that time and I was confident that the soil was good and conditions were good. I had no reason to doubt it except the statement of Mr Ward, except that Mr Oehlinger told me something just previous to the time our contract was cancelled at Minneapolis. I don't know whether Mr Nelson deeded his farm to the Hayes company. He had a contract and whether or not he assigned it I don't remember. I got not a cent out of this deal. Mr Oehlinger's statements were made just a few days before we got notice of our contract being cancelled.

In a letter I wrote Mr Sefton stating Mr Ward would stand for "well regulated pressure" I meant if Mr Ward were approached intelligently and told the possibilities of the land he would be inclined to be with you and accept courtesies. I never had in mind preventing his seeing the land, only to have him see it under the most favorable conditions. Our great object was to sell Mr Ward more land. I had intended using him to sell other people in the vicinity and naturally I was very much concerned about him. I had been warned by stock salesman that he would not accept the land.

When a person visits the land who has obligations, it was our policy to have somebody there who might be able to explain anything they wanted to know.

Mr. Ward was given one thousand dollars in the shape of a credit and not in cash for his expenses

(Testimony of Charles F. Fries.)

to Chowchilla. This credit was charged to my commission.

Q Now, Mr. Fries, when you were asked the question as to whether or not you told these men that you had seen their land, the land that they contracted to buy, was it a fact in a general way that you had driven around and seen that land from an automobile, the land that these men had contracted to buy?

A I never intended, generally speaking, to tell any one what his particular piece was. I was escorted about the ranch pretty well, as I thought, and had been assured by the escorters, Mr. Smith, Mr. Schnorr, Mr. Geral Hayes, Mr. Herndon, Mr. Palmer and *other* that the land was all good and I naturally made those statements.

The only person whom I sold that made a complaint about his deed was Mr. Freerks. I presume the rest got their deeds. After Mr. Freerks spoke to me about his deed he purchased other land. A Mrs. Clark was in charge of the deed department. I talked with her about the deeds. She said they were going out. I talked with her twice.

I have been thinking about the question of Mr. Ward exchanging some of the land. As I recall now Mr. Ward first contracted for 46 acres of land instead of 57 acres and that accounts for this being changed.

RE-CROSS EXAMINATION

Q *** I will show you this diagram, which I will

(Testimony of Charles F. Fries.)
ask to have marked Government's Exhibit No. 15 for Identification.

****

Mr. Moody: *** Probably the top one will not be permissible, but the bottom one I think will. **** In order not to take it apart why don't you read it?

****

Q Does your signature appear thereon. A Yes, sir.

Mr. Weisl: I introduce in evidence all except the top part as Government's Exhibit No. 15.

Mr. Moody: It purports to be a regular assignment of that contract dated October 4th. The contract here was dated October 3rd.

(The witness): I witnessed the assignment of a contract held by Mr. Nelson for his tract of land in Saint Charles, Ill. and it was assigned to the Hayes Company in exchange for 120 acres which I sold him.

THURSTON C. SOUDEN, called by defendant, sworn, testified.

DIRECT EXAMINATION

BY MR. MOODY:

(The Witness:) I reside in Los Angeles; business is salesman for C. W. Merrill, distributor for the Western Soil Bacteria Company who sell bacteria for increasing the fertility of soil. I have been in that business three years. I have traveled all over Cali-

(Testimony of Thurston C. Souden.)

fornia as an expert technic*ql* and mechanical expert on soils. I am familiar in a general way with the *Chowcilla* ranch and know where the town of Chowchilla is.

Q Do you know alkali land when you see it? A Sometimes.

Q What do you mean by "sometimes"?

A Alkali may be so disguised or even in its natural condition so that without an analysis nobody can tell it.

Q What are the conditions under which it may be disguised?

A Well, the land may be irrigated. After a recent rain, sometimes in its natural state.

Q Now, when a rain occurs what happens to the visible alkali on the surface of the land.

A The natural salts in the alkali are passed off and has a tendency to dissolve in a heavy rain and washed down out of sight.

Q What are those salts composing the white alkali?

A Glauber salts, common table salts and baking soda.

****

Q Do you believe it is possible from the experience that you have had with alkali for an ordinary man driving over a piece of land, during a rain storm or shortly succeeding a rain storm, to tell without a chemical analysis or without getting out and making a careful examination of the soil as to whether

(Testimony of Thurston C. Souden.)

the land over which he is driving is alkali land?

A Did you say just tell or determine whether it is alkali land? No sir.

Q With your experience that you have had, do you think it would be possible to tell yourself whether it is alkali land?

A No sir.

****

I have seen alkali there. I recall the main Boulevard there. I don't recall having seen any alkali along that boulevard.

Q Suppose that white alkali land were recently plowed, that is plowed a short time before it was shown to the ordinary un-expert observer, would it be apparent whether it was alkali or not?

A That is more or less governed by the amount of alkali that the soil contains.

Q What, for instance, do you mean by that? Just explain.

A Well, sometimes in some localities the salts that are down in the soil have a tendency to rise quicker to the surface than others and in a case of that kind especially where the soil is very loose, there may be a course or a layer of alkali salts on top.

Q There may be shortly after? A After a plowing, that is a shallow fill.

Q And it is a deep fill?

A It would not show.

Q And *it* it had been broken up without plowing

(Testimony of Thurston C. Souden.)

by a chisel or a heavy rain storm occurred, would the alkali disappear?

A Yes, sir.

****** during such winters as we have in the San Joaquin it might be out of sight a couple of months. I do not believe that it is possible to *driver* over a piece of land which has recently been plowed or which has been plowed and rained upon and tell whether or not it is hard pan soil with digging into the soil. Hard pan does not always show upon the surface. If the hard pan was *tow* or three *feed* down it would not be detrimental.

CROSS-EXAMINATION

By Mr. Weisl:

The Witness: I never heard of the Daniel Hayes Company. I do not know which land the Hayes company was selling, the particular lots or plots. To remove some hard pan it is necessary to dynamite it out of the ground. I have seen hard pan being dynamited. That does not say how hard it is.

Defendant Rests

JOHN BRUNS, a witness called by the Government, sworn, testified as follows:

By Mr. Weisl: I live in Pasadena and formerly resided in George, Iowa. Have been on a farm many years. I bought 57 acres and 19 acres from the Hayes Company; I saw the land after I bought it.

(Testimony of John Bruns.)

It had too much alkali, to my eye, looked white. I saw it the 8th or 9th of July. I paid $5700 and $1900. I never asked for a deed. I rejected the land. I did not get my money back. I never saw Mr. Fries after he closed the deal with me.

CROSS-EXAMINATION

BY Mr. MOODY: Mr. Freerks and I have a conversation about the land I bought. I have known him since 1892. He thought the land was very fine and said he had been out to see it. I bought it altogether upon his advice.

E. M. WARD, called on behalf of plaintiff, sworn, testified:

DIRECT EXAMINATION

BY MR. WEISL:

I live in Sioux City, Iowa. I am a married man. I deal in farm lands, and have resided in Iowa since 1910. I met the defendant Charles F. Fries in January 1919. I met him through my brother, who introduced me to Charles Fries and his brother Will Fries. They invited me to their room in the Martin Hotel where they showed me different pictures and gave me a history of The Daniel Hayes Company, and told me of their responsibility. Mr. Fries told me that this land was very productive, that they were selling it on contract subject to approval. He showed me some pictures, but I said I did not care anything about looking at pictures, that you could get them any-

(Testimony of E. M. Ward.)

where; I am interested, if anything, in the type of contract such as you are selling. I took the contract to read it, and the defendant took the contract out of my hand and says: "Here, Ed., here is the part you will be interested in"; and it was a clause giving the proposed buyer the right of rejection. I read that over very carefully two or three times. I said, "Now, that clause is all right if the Company is responsible." And he says "Absolutely". That was in the presence of Charles Fries. All my conversations were when both Fries boys were present. After reading that clause over very thoroughly I said I had no objection, if that clause meant what it said, so I just signed the contract. I thought that was just preliminary. Then they commenced to prepare the notes, and did prepare the notes to the extent of $32,000. The contract called for 320 acres. They filled out these notes and handed them to me to sign. I read one of the notes; it was "Payable to myself." I says "I don't want to sign notes like that, absolutely not. You could go right out on the street and cash those notes and take the first train out of Sioux City." Ed. says, "Well, you know we have to have confidence in each other". I says, "I know you were introduced by my brother, but I have never met you before. There is only one way I will sign these notes and that is if you will write on the back of these notes 'the collection of these notes is to be governed by one certain contract of Daniel Hayes Company of Idaho, of

(Testimony of E. M. Ward.)

even date' " They agreed to that. I signed the notes and they gave me a cigar and invited me to supper, a little banquet. I says "That is very nice, but my wife don't know anything about that; don't know whether she will object or not". They said we would go to the theatre and have a little banquet. I told my wife about it, and at first she objected, and I told her they were introduced by my brother and I believed they were all right. There was nothing more said about the writing on the back. We visited in a social way at the banquet and went to the theatre and had a nice time. The next morning it came to me that the writing was not put on these notes. I went up to the Martin Hotel and was informed that the Fries Brothers had checked out. I was worried in a little way, but I did not think there was anything wrong and expected them to come in at any time and I would go and inspect the land. They said there were a number to go and they had to arrange it to accommodate each other. I advised them if it was delayed any length of time it would interfere with another trip I had to make. Finally they got ready just at the time I had to go on this trip and I could not go. I received a telegram from Salt Lake signed by my brother, stating that they were on their way home, had inspected the land, favorable impressions, and arranged to meet us at Sioux City. I went down and found my brother conversing with the Fries Brothers at the Hotel at Sioux City, and we all went up to the room. My brother had signed

(Testimony of E. M. Ward.)

up at the same time I did for some land right across from the boulevard from mine. We had looked at this land and it was too rough and hammocky, and Mr. Fries agreed that it was pretty rough. Mr. Fries said "We made up our minds it would not be advisable for me to take this land". They said they had taken the party to a section of land about a mile south, where there was a full square section unsold. They advised George to transfer his first purchase and would also advise me to change this section George did make the transfer and expressed a willingness to take half of the section if I would take the other half. We discussed how we would divide the section. It was finally decided to divide it north and south and I would take the east or west section and he would take the other. I finally took the east half. *They* he drew the contract and they prepared the contract in accordance with the notes. When we got ready to have them signed, they said "Boys, by the way, you never put that statement on the back of these other notes; now I want that put on these notes." One of them spoke up and said: "That was on the other notes, not on these". I said "it didn't make any difference, this contract supplements that one." Then they said "We have agreed with George, and we will do the same with you, that we will hold these notes until you have inspected the lands and if you disapprove it we will hand you back your notes." The fact that they had held the other notes and had them right there and presented them and

(Testimony of E. M. Ward.)

the contract and the notes were torn up and destroyed, rather led me to believe that they were on the square. My brother was anxious to get away and said it was getting near train time and he had to go home. My brother said "You had better fix up mine and you can finish fixing up the difference afterwards". It took some time to fill them in and finally my brother said: "I got to go," and he signed the notes and the contract in blank, and I thought to myself "You big chump, signing anything like that, even to your best friends to fill out", and he says "he must have confidence in those fellows." My brother left and they filled out mine. I objected to the fact that the statement was not on the back. As I have stated before it was then they promised to hold the notes until I had visited the land, so I signed them. At the time these contracts were signed they were very insistent that I waive my right of rejection on the ground that my brother and his party had seen it. I can't remember which one of the Fries Brothers said that. I said "I beliebe my brother and this other man seem to be all right, but I have always made it a rule never to buy any real estate without having seen it myself, then I have no one to blame and I will not vary from that rule". I refused to waive my right of rejection. They prepared a letter in which I was to waive it and it was agreed I was to sign it and turn it in, to send it in. I took it home and turned it over to the authorities. After I signed up my contract I said "Here, I want a copy of that contract" and one

(Testimony of E. M. Ward.)

of them turns to the other and says, I think Charley, "I don't believe we have any of these extra ones." They kept stringing *my* and finally I said, in the way of an order, "Give me one of those contracts." They gave me one. I took the contract home, not that what I believed everything was all right, but I had been doing business with men according to my custom, and it was kind of worrying me, and I sat down with that contract, to read it over, and read it over four or five times a day for a week. It seems as though when I read it over certain clauses would be obsolete and then going on to find a clause which would contradict them, and finally I say their every protection was in the interest of the company and no protection to the signer, and I wrote to my brother and asked him if he had ever studied the contract. I told him I had become suspicious because I did not think any legitimate company would have a contract drawn in such a conflicting way.

I didn't hear anything for a little time and started to go to Pringham and have an interview. As the train was ready to go out I saw William and Charles Fries coming in with a smile and a glad hand, and said they heard I was starting for Pringham. It indicated to me that they had gotten information from my brother that I was wavering and they came down to Sioux City to sooth my ruffled mind. They had called up my house and my wife said I was leaving to go to Pringham. We went back to the depot, I

(Testimony of E. M. Ward.)

turned in my ticket and got my money back, and we went to the Martin Hotel, and they proceeded to explain how unnecessary my fears were, and practically did satisfy me for a time. I remained, planning to go away on the 13th of March. Following the 17th day of February they came to Sioux City and told me they had to make a settlement with the company within 30 days. I says "Why, you fellows told me you would hold these notes and these contracts until I had inspected the land." Ed says, "We expected you were going to go right away". I says, "You had no right to expect it", I says, "I never told you so, and by the terms of the contract I have 90 days." They said, "the company was pounding them on the back and they had to make a settlement, and they would give me an opportunity to discount my own paper. I said I could not discount it, and they suggested that I see the bank. I said I would not ask the bank, and they suggested that I arrange to discount half of it and they would discount the other. When I was expressing my provication because they insisted on a settlement, they said they had 30 days in which to make a settlement, and they told me they had already sold one of the notes. I said, "You absolutely sold one of them and the 30 days ain't up?" I says, "you fellows are not using me on the square. That is twice you have lied to me; I am going to make a liar out of you again, because I will take the train tonight, which is very inconvenient, and go to California, and will inspect the land

(Testimony of E. M. Ward.)

and will turn it down within 30 days, in which you have admitted I would have to make a settlement with the company. With an oath I jumped up. We were in their room in the Martin Hotel. I called their attention to the clause which provided 90 days and if the client is not satisfied the company will return the notes or cash. They said I was wrong and turned to the part of the contract in which it contains "Received this day from E. M. Ward $32,400 in cash". So that clause contradicted the one below. I thought if it came to a show-down I was headed off on account of that clause being conflicting with the other one. I says, "I do not say but what the land is all right; I do not know a thing about it, but suppose it is a mountain, suppose it is a lake, and suppose the company is responsible, all these things, if I take my rights in 90 days to inspect the land, which I have a right to by the terms of the contract and they take their rights which they could have by the terms of the contract to refund the money, I pay interest and I am out the use of $32,400 for practically six months, but I have got to pay that interest and travelling expenses to California and back, to inspect the land". I said "It is a skin game, I have got enough of it". That is when I jumped up and said I would inspect the land and turn it down. Bill said "Hold on, we don't want you to go out there in a prejudiced state of mind." Bill said the interest and travelling expenses would amount in round figures to $1,000 -- if

(Testimony of E. M. Ward.)

you will execute the remaining notes, $26,000 worth --they had sold the $6400 note--on the stationery of the German American Savings Bank of Sioux Falls that they could sell the notes and they would take off $1,000. Charley protested to Will at taking off the $1,000. I looked at Will and saw Will give Charley the wink, and Charley shut up, and I made up my mind right there I was dealing with confidence men, and I made up my mind I had better go through with I would be $1,000 to the good, and it would come to a show-down probably in the court some time. I executed new notes for $25,000 instead of $26,000 and arranged to go to California as quickly as possible. I left on the 19th of April. I telegraphed my brother to go along but got no reply by telegram. Later I got a long distance 'phone from Will Fries, and he said that George had turned over the telegram, and he was surprised I was going so soon, and asked me if I had not better wait until Monday, Sunday being Easter. I said I was too busy to wait for Easter, that I had my ticket. He said, "Wait and I will come down". I said I did not want him to come down. I started out alone and went directly to Berkeley and telegraphed to the Home Office for the names of authorized agents who would accompany me to the lands. They wired back L. L. Palmer, Gerald Hayes and a Mr. Anderson. I took the bus to Madasca where I knew parties who had originally lived in South Dakota. I thought I would stop there and make in-

(Testimony of E. M. Ward.)

quiry. I did not run across anybody at Madesca that I knew personally. I looked in the windows of real estate agents. They were closed for the night, but I could see this kind of a piece of land was so much and this kind for another amount. In the morning I left on the stage and sat next to a man who said he was going to Chowchilla. I asked him if he knew anything about conditions there. He said he did.

(Conversation between witness and man on bus stricken out as hearsay).

I arrived at Chowchilla about ten o'clock and went right to the office and called for these three men. The young lady said Mr. Palmer was in Chicago and Mr. Anderson and Mr. Hayes were out on the ranch. I gave her my name. About eleven o'clock Mr. Hayes arrived. We went down Robertson Boulevard and then went diagonally across country to Section 2. There was a good lot of land that was broken up. This was on the 25th of April. Wherever this alkali or hardpan existed the crop had withered and died. Between these spots grain was growing. We got down to our section. Right across the road was the hay section that was in crop. It was very hummocky and I began to find fauly with the lay of the land. I said that the land had been represented to me as smooth land, like the Dakota prairie. Mr. Hayes tried to tell me there was no objection. I said "You can't make me believe that that alkali or hard-pan condition is no objection, because I have seen too

(Testimony of E. M. Ward.)
much of it", and he says "Do you expect to buy any land in California that is not more or less alkali, if so, you are going to be disappointed, you might as well go home" and I says "Well, I will go home". Then he says "You had your mind made up before you left home that you was not going to be satisfied" and I absolutely said I didn't. I said "If that is the best you have to show me you might as well save your time and my time". He tried to railroad me into acceptance and I said "You can't get away with that stuff". I was familiar with alkali conditions, we had a great deal in Dakota. After dinner Gerald came down and said the man who had went out with us this afternoon wanted to inspect some land and that from the description I had given him, that they had the right kind of land. Now, I said "I took you for telling me the truth; you told me on the way back if I expected to find land lying smooth and no alkali in California, I might just as well go home"; why did you come around and tell me you have got some." He said that was not literally true. I told him if he was willing to admit he had misinformed me, I would inspect it. We went up the boulevard and went north, probably a mile and through some fields where there was a piece of land that laid good and looked to me like good soil. I confessed to him that that was a piece that looked nearer right to me than anything I had seen. Without giving the matter a thought I thought the lines were full of representations, but

(Testimony of E. M. Ward.)

the cropping and the contract to me looked like a failure all the way through. I told him that the whole thing looked like a failure, that I had not seen a man working on the 108,000 acre ranch. He had not shown me a well they had down; that the terms of the contract was to immediately put it into crop. He said by reason of the war it was impossible to get material and help, it was out of the question. I told him that I believed the land at $200 per acre, rightly handled and put into cultivation, was all right, but the way they were handling it it would be eaten up by taxes. I told him I did not believe I would accept it. We went back to the hotel and after supper he asked me to go to the office. He there introduced me to Mr. Anderson and the two of them tried to argue the merits of the proposition. Mr. Hayes finally got tired and left Mr. Anderson and I there alone. I finally told him the land was worth $200 per acre to an actual settler who would go on it with his family, but under their management it was the bunk, a failure. The land in Section 2 was not plowed. It had never been plowed.

I then asked for a rejection blank and they said they did not have any, that they never had a rejection. They said they had acceptance blanks and I said, "If a blank of rejection would be similar to this one it would reject instead of accept". The man at the office says "We will see you at the train". At that time I expected to go at 7 o'clock in the morn-

(Testimony of E. M. Ward.)

ing but on thinking it over I made up my mind to take the train at one o'clock at night. I arrived at Berkeley at one o'clock Saturday and prepared a note of rejection and wired it to the company. After seeing the land I made up my mind that the company would bear watching as the contract said the notification of rejection must be received in Chicago within seven days of the date of inspection I wondered if they would take advantage of the technicality and refuse notification by telegram. I wired them my notification of rejection and at the bottom said "If for any reason this notification is insufficient or incomplete or unsatisfactory, to wire me at my expense." That was on Saturday afternoon and I got a reply Sunday evening at five o'clock, at which time I received a telegram which said the notification must be in writing. That is what I expected, so just before I sent the telegram I registered a letter to the company, with a copy of the notification of rejection. I also sent a copy of the notification to the First National Bank of Chicago, with instructions to them to go personally and serve it on the officers of The Daniel Hayes Company. After I got home I received a letter from the Hayes Company saying that they had received the notification of rejection on the 30th day of April. I thought then they were satisfied that I had lived up to the terms of my contract. I wrote them and asked them when I would receive the return of my money and never got an answer. Some little time after that Mr. Fries came to Sioux City and asked me to go down to the

(Testimony of E. M. Ward.)

hotel, and I did, and he says he understood I rejected the land and wanted to know why. In a way I scared him considerably for misrepresenting the land the way he had done. I told him it was hummocky, that it was not smooth, that it was spotted like an adder with alkali, that the cropping end of the deal was a complete failure and he started in a line of argument in defense of the proposition. I told him he ought to be ashamed to represent things the way he had under the guise of friendship. He assured me he had no such intention and if it had been misrepresented he was very sorry. He said he would not in the world try to beat anybody or put anything over on a friend like that if it wasn't good and if the company was like I had represented it he would quit them that night. He said they had $8000 of his money and he would assign his contract. I told him it could not be assigned and he said it had been done and he could do it. I have never been reimbursed by the Hayes Company.

CROSS EXAMINATION

BY MR. MOODY:

I met Mr. Fries sometime in January. I had never seen him before. He was introduced by my brother. My brother told me he had bought California lands before Mr. Fries arrived. I do not think he told me he had bought from the Fries brothers. My brother introduced me to them about two o'clock in the afternoon. My brother left the next day. I signed my

(Testimony of E. M. Ward.)

contract that same afternoon between two o'clock and supper time. I do not know whether my brother stayed two or three days or not. He was there attending a meeting of the directors of the American Bond & Casualty Company. He usually stayed at my house, and if he stopped over night I think he stayed there that time. He admitted he had known the Fries boys for some time, that they had headquarters at Pringham. At first I said I did not want to see them or have anything to do with them. This was while we were at dinner, before they had been introduced. After dinner I said I would walk down but I did not want to meet them. My brother asked me to go to the Martin Hotel and took me over and introduced me to them. It was about two o'clock. I sat down and listened. My brother did not stay there. He did not come back. while we were in the room of the hotel: I think I signed the contract probably at three or four o'clock. I had not seen Fries before. I had made up my mind to tell my brother I would not have anything to do with them. In less than two hours they talked me out of a contract for $64,800. My business has been buying and selling farms, real estate, for thirty years. I never signed that kind of a contract before or for anybody on that short notice. I never signed a contract for as much as $64,800 before. It was the biggest contract in my life. I did it in two hours with people I never heard of before, except through my brother. It was

(Testimony of E. M. Ward.)

somewhat due to the fact that my brother had confidence in them, and that I had confidence in my brother. Possibly more because I had confidence in my brother. Probably I would not have talked to them at all except for the confidence in my brother.

"Q Would not have been your habit to give in to anybody trying to sell you things?

A No, sir.

Q As a matter of fact, you are a pretty hard man to handle?

A I believe that is for others to judge.

Q You consider that you would be pretty hard to handle, to hand you anything?

A It has never been done except through my brother."

The first thing the Fries boys told me in the hotel was about the Hayes Company, their responsibility and their record for 45 to 60 years. My brother had told me before that he had bought some land of the company. I did not know he was a stockholder in the company. I do not remember how much time they talked about the company before they started in on the land, probably half an hour. Then they showed me letters of different men and a map of this territory, showed me where my brother bought his land, told me about this boulevard through there and there was about 240 acres right north of my brother. At that time he had bought something like 75 or 80 acres in two or three different tracts along the boulevard. I picked out this half section on the south side of

(Testimony of E. M. Ward.)

the boulevard, 320 acres. They handed me a contract and I started to read it, and he picked it up and took it out of my hand and says, "Here's the part you are interested in" and didn't give me time to read them. I read one clause which contracted for $64,800, that is true. There was nothing said about the terms any more than I was supposed to pay one-half. My supposition was that after approval of the land I was to make this payment of one-half. I did not ask them if that was true.

"Q Where did you get that supposition?

A Because they told me you made half of the payment on the land when you buy it, and I didn't see that I bought it until I approved it."

I did not see that statement in the contract but subsequently saw it.

"Q Did they notify you what you were expected to do after you signed the contract?

A Then they sprung this notice."

Then I was suspicious when they did that. I could then have drawn out. They then presented some notes and told me I was expected to sign these notes for $32,400. I signed them under the terms. I signed them on the back and when they left my hands they were negotiable. I owned as much as $32,400 at the time I signed these notes. That did not alarm me. I did not put the terms on the back of the notes because I did not know it was my business to do that. They took these $32,400 worth of notes and agreed to hold them until my brother went on the

(Testimony of E. M. Ward.)

land, if he went within 90 days. That was in the contract, the 90 days. I do not know as I could tell at that time just how long. This clause said I had 90 days. I told them that I could go out and inspect the land pretty soon. I might have told them it would be within 30 days. I do not think my brother told me they held his notes until he went to see the land. They held my notes until the party went out and came back. My brother told me they had went out and looked at it and they thought it was all right. My brother has been a farmer. I think he is running a hospital now. He was a farmer practically ever since I was. Up to the time he made this deal I had no reason to doubt his judgment of real estate. He didn't give me quite as good account of the land as Fries did. I do not know that he contradicted any of the statements of Fries. He told me he was satisfied but he was not enthusiastic. I understand now why he was pressing the sale of this land. I have reference to the $5 commission. I had been getting a little suspicious of my brother previous to this deal. I was not suspicious on this deal before I heard of this $5 commission. I was rather inclined to believe he was a victim. When my brother came back he said he had been over Section 2 carefully and was inclined to believe it was all right. He said it laid pretty smooth. He said nothing about alkali. From his report and what the Fries boys had to say about it I signed up for that half section, and he signed up

(Testimony of E. M. Ward.)

for half of the same section, I suppose. I never seen the contract but he told me so and the Fries brothers told me so. It was for the same amount of money, $64,800. As far as I know he has held to that contract. I have never heard anything different. When I signed the second contract it was the 17th of February. I had not read it over in the meantime. I did not read a copy before I signed the second time, the second time for $64,000 without reading it. They would not give up the other contract until I would execute this one. They handed me the second contract for signature. When I had it in my hand for signature I did not read it and signed again for $64,000 without reading it. My confidence had been specially shaken in them. They gave me back my first notes for $34,200; they were negotiable all this time and they could have cashed them. I had never had any of my paper turned down previous to that time. I think I had credit worth the amount of these notes. The conversation about the $1,000 discount for myself and wife to make the trip did not take place at that time. They were made out again for $34,200 and delivered to them. I did not write on the back about the collection. I asked them to do it and they said they had promised to do that on the others but not on these. I signed the notes without seeing this clause was put on. I did not consider it my business to put it on. When they handed them to me it was not on there * * * * * They said they would hold the notes until I would inspect the land and I

(Testimony of E. M. Ward.)

said I would try to get out as soon as I possibly could. They did not tell me they would give me 30 days in which to see the land. I was to see it as soon as I could; no definite time. I did not go out for a little over two months and 90 days from the time I signed the first contract. From the time of the signing of the second contract they came back in 24 days and demanded that it be settled in 30 days. I got sore about it, and said "I will go out on the car tonight and reject it" so as to be within the limit. From that time on I had practically made up my mind I would not take the land. From that time on my negotiations with the Fries brothers was not for the purpose of buying the land but for getting out of my contract. I certainly went out with a prejudiced mind and had no intention when I left of signing up for the land. They came down on the 13th of March and demanded a settlement, and at that time I said "I will get on the train and kill the whole proposition". They didn't tell me they must turn all of the $34,200 into the company. They said they could turn in a voucher in lieu of cash to make up the $32,400. I told them at this time it would cost a lot of money and this interest, and they agreed to give me a credit for $1,000 and I agreed they should cash my paper. They told me they had sold a note for $6400. Notwithstanding that I gave them new paper for $25,000. I went over to the bank to see if I could get the money before I made these new notes. The banker wanted to know what I wanted to use it for,

(Testimony of E. M. Ward.)

and I told him I was going to make an investment in California land. He wanted to see the contract. I showed him the dummy contract that I had. At this time I had a copy of the contract and I thought I had pretty well digested it. The banker said he did not seem favorable to California investments. He read part of the contract. I called his attention to the clause of rejection and he asked "What do you know about the responsibility of this company?" I said I thought the responsibility was all right, that my brother recommended them very highly for responsibility. He said he would not let me have the money. I told Mr. Fries that the bank objected to letting me have the money. After they told me they had got to sell these notes and were not living up to their part of the agreement I did not feel that I wanted to have anything more to do with them, but I went out and assisted them to cash my paper for $25,000, because I got a reduction of $1,000 to make good this interest I would have to pay and my travelling expenses. I went before a Notary Public and made a statement of liabilities and assets on forms submitted by the Sioux City bank for that purpose. I did not consult an attorney about it. I did not so tell Mr. Fries.

"Q And turned this paper over to them to cash at the Sioux Falls Savings Bank?

A Yes, sir.

Q When was that?

A The 13th of March.

(Testimony of E. M. Ward.)

Q Was it all on the 13th of March that this took place?

A Well, yes, -- the property statement, I think, was next morning. They forgot it the night before and called me up and wanted that, and I went down and made a statement next morning.

Q And then you didn't leave right away for California?

A No.

Q You knew that they did cash your notes for that amount of money?

A I did.

Q And that they had the money?

A Naturally, if they cashed the notes.

Q And you didn't leave until the 19th day of April to go to see the land?

A That is right."

I didn't lose confidence in my brother's opinion as a land expert when I saw that he had accepted, but I do not put my money on another man's judgment as to quality. I absolutely did lose confidence in his judgment on California land. When I came back from California Mr. Fries called on me of his own accord. Mr. Fries said something to this effect: "Now, Ed. I will tell you, I don't want you to think I am questioning your judgment or your ability to judge land, but don't it seem kind of strange that all these other men who are reasonable, good, intelligent men should go out and inspect this land and approve it, and that you are the only one that can see any fault

(Testimony of E. M. Ward.)

in it"? I said that possibly their environments were different from mine at the time they went out.

Redirect Examination

BY MR. WEISL:

I did not know that Mr. Freerk and my brother were getting a commission on the land. If the land had been as represented and the developments had been absolutely as it was represented to be I would have accepted it.

"Q And while you lost confidence in the Fries boys you still had confidence in the Hayes boys?

A I did until I arrived on the tract and saw the conditions.

Q BY MR. MOODY: Did you say you knew Mr. Freerks?

A I found out afterwards * * * this man Freerk, who was a stockholder had bought the note. I did not know him.

FRED O. NELSON, called on behalf of plaintiff.

BY MR. WEISL:

I live in St Charles, Illinois. I am a married man; a farmer. I purchased land from the Daniel Hayes Company about the first days in June 1919, from two gentlemen by the name of Fries and Losch; about 40 acres. I went out to inspect the land in the last days of June. I found that the piece they had plotted out to me on the map was entirely tule, and I got sore about. When I went to the office they said they had another piece they would show me. This piece was

(Testimony of Fred O. Nelson.)

pretty near as bad as the other. I told them I did not want anything to do with the land. This fellow, a man by the name of Smith, said he would show me another piece, and that was half alkali and I did not want it. I walked over a little farther and there was another 40 that looked very good. I said, if you will let me take this 40 for the other I will take it, otherwise I will cancel my contract. They let me have this 40.

Q When did you meet the defendant, Charles F. Fries?

A I would judge around the 15th or 18th of July. Losch introduced Fries as one of the head sales managers of the Daniel Hayes Company. They told me of the great things they were doing in Chowchilla; told me of the responsibility of the company; no greater company in the United States organized for land sales. They wanted to know why I did not go into their cropping agreement. I told them the cropping I seen down there would not pay for the seed. Then they told me they were to have a meeting at Elgin and wanted me to go up and tell my friends around to come up. Fries told me the company had this 108,000 acres and a hotel and bank at Chowchilla and a building at 109 North Dearborn that was worth three million dollars. I went to the meeting at Elgin. Fries made a speech. He said he was an expert on land and dealt in farm lands all his life, and real estate; that this was the biggest opportunity that he

(Testimony of Fred O. Nelson.)

had ever seen; that he had 640 acres for himself and lots of other real estate in the Red River Valley in Minnesota that he was going to sell and purchase more land down there while there was a chance to get it. I didn't just understand, but the understanding was that he was to sell this to some bank, to get security to get more land there. He told how the cattle fattened on the dry grass, the money the farmers were making on grass feeding and afalfa and how much milk they were getting off the cattle and how many cattle were feeding on 40 acres, and one thing and another like this. He said he was a land expert and he had been over this land and knew the whole tract from start to finish. He didn't say anything at this time about other people examining the land, but previously told me the government experts had been over the land -- said it was so rich it would not need fertilizer for one hundred years or more. Then it ran along for two or three weeks. At the time we were threshing and he started in and wanted me to buy more land. I said 40 acres was all I could handle. He suggested I sell the farm and buy more. They insisted there was a 37 acre piece and I should buy that and I said no, I would not. They said if I would buy it this way -- that if I sold my farm by the first of October I could cancel this contract; so they gave me a contract then and they were to hold the note until the first of October, and if I did not sell my farm by the first of October they

(Testimony of Fred O. Nelson.)

were to return my note. It ran along until about the middle of September and I got notice from some bank in Oregon that the note would be due the first of October; that they were holding a note against me for the Daniel Hayes Company. Then it ran along until the last of September and I got a notice from the St Charles bank that they had a note against me for collection in the sum of $3700. I went to the bank and refused it. I said I never agreed they should sell the note and for them to reject it. Then the first chance I got to go to Chicago was the 3rd day of October. When I got there Fries was in the office. I went after him. I was pretty sore about it. Fries said "We will get that note back for you". I went in the Sefton office and talked matters over and came out again. He wanted to know if I had not sold the farm. I said there was a couple of parties wanted to buy it but they could not raise money enough so that it would be satisfactory to sell them that way. He came out and says to me "How would you trade?" I said I never thought anything about trading. I told him I could not think about that today, that my car was soon leaving. He says "Well, I will tell you, we have talked the matter over and we will allow you $150 per acre and 120 acres down here at Chowchilla and $1500 in cash for the farm." I said I might do it but I could not do it that night, I thought I would come in the next day. He told me this 120 acres was the best piece of land there was; that he had

(Testimony of Fred O. Nelson.)

been over every foot of it and I took his word that it was a good piece of land. I finally agreed that I would take this. He wanted me to sign a note for $500. You see I did not have a deed on the farm; I had a contract, and if I didn't give the contract this morning they would forfeit this $500 note on me. My wife was sore when I got home at night because I had gone in and done it this way, so I went in and told them about it. They told me if I wanted to throw up the contract it would cost me $500. I was in circumstances I could not do that. I told them I had more land than I could handle because of the interest; they had gotten everything I had and I had then $4000 still in the bank where they cashed these notes. I said I could not do it. He said on the first of November they were going to raise this land to $250 per acre and I will sell that for $250 and charge you $10 per acre commission. I told him if he would do that I would take it that way, but otherwise I could not. I told him if I went into it that way I would want to rent the farm back for another year, because my circumstances were that I could not leave then and wanted to stay another year. They agreed to give me a lease on the farm. They wanted to know what I would give and I said $8 per acre. They wanted to have the lease call for more than $8, but I should not pay them more than $8 because they said it was easier for them to sell the farm if it was rented at a big rent. I would not do that. I says

(Testimony of Fred O. Nelson.)

"Well, the $1500, I wanted it, because I would have to use it. I borrowed $4,000 that morning at the bank to buy cattle with. They did not have any money in there and they wanted me to draw for the $1200 rent and just give me a note for the $500. They owed me $127, because they were to pay my fare to Chowchilla the first time on the 37 acre deal. The whole amount they owed me was $1627. and they wanted to take off $1200 paid as rent and give me a note for $427 due September 1, 1920. Fries was not conducting these negotiations on the note; the negotiations were with some of those other fellows that were in the office. Fries told me he owned 640 acres of land at Chowchilla; he said he was farming it and it was bringing him a good income. I signed this contract for the 120 acres. I did not look at the land. I did not ever get my deeds. I did not see this 120 acres until last summer, after they were in bankruptcy. I found about two-thirds of it alkali. There was a little piece on each corner with a little grass on it. It was never plowed.

CROSS EXAMINATION

BY MR. MOODY:

The first men I met were Mr. Fries and Mr. Losch, in June 1919. I had never heard of the Chowchilla project before that. These men were travelling from farm to farm trying to sell. They came to my farm and explained the project. I did not sign the first day; they came back four or five times. I signed the

(Testimony of Fred O. Nelson.)

agreement. I had ninety days for accepting the land. I accepted the 40 acres I picked out. I looked over 1,000 or 2,000 acres of the project. I saw alkali and saw land I did not think much of, and I saw land that I thought was good land. The land I picked out first I found to be alkali.

Q Did these men that sold you this land tell you it was or was not alkali?

A They said in the agreement if there was anything I did not like in this land or if there was anything unsold, I had a right to take my choice out of anything.

Q Did they tell you that the land you bought from them and picked out was alkali land or good land?

A No, they said the fellows in the office recommend this piece of land to be good land.

Q And they had not been there?

A They had not been there.

When I went out there I saw it was a very spotted country, some good and bad pieces.

Q Up to the day you signed the second contract you had never seen Mr. Fries?

A I seen him in between

Q You saw him between the time that - -

A No; these agents were out with the contract. The contract was dated July 21, and Fries was out a day or two right after, the day I signed this contract.

(Testimony of Fred O. Nelson.)

Mr. Fries had nothing to do with inducing me to take the first forty acres. I took that on my own judgment. I was satisfied when I came back.

Q And you had a pretty general idea of the country when you came back?

A Well, some of the land looked good, you know.

Q What did you tell your neighbors about Chowchilla?

A Well, I told them there was some of it was pretty good land. I told them just about how the thing was looking. There was some pretty nice dairies there.

Q Did you tell any of your neighbors there was lots of alkali there?

A Yes; I told them there were spots that were worthless.

Q Did you tell them that you were going to pull up stakes as soon as you could and go out there?

A It was my intention to go on the forty acres.

Q Now you say Mr. Fries came out then and talked to you?

A Yes.

Mr. Fries didn't at first try to induce me to take an additional piece of land. He said he was going to hold a meeting of farmers at Elgin and asked me to be present. I agreed. I don't believe I got up and said anything at the meeting - - people personally were talking to me. There were eight or ten people altogether. We were talking matters over, just the way

(Testimony of Fred O. Nelson.)

I found; I told them there were good pieces of land in there and bad pieces of land. I told them I was quite well satisfied with my 40 acres and it was my intention to go out there and make my home. I told Mr. Fries I intended to sell my farm and that if I could sell the farm I would buy some more land. And then he came down and asked me why I didn't sign up for an additional unit next to mine. I told him I would not do it unless I sold the farm. Then I signed up. I got my note back. It had been cashed in the bank. I never paid that note. Mr. Fries said he had 640 acres there at that time. It didn't make any difference as far as my intention to buy land was concerned whether he had the 640 acres or not, except that if people are out selling anything and you buy it, you think you are perfectly safe when they say they have bought. I had been out and seen it, but I never saw how much they had. If he had told me that he had bought an acre I might have made my arrangements to go out, but I would not have made any arrangements to buy any more. I am sure he said 640 acres, a whole section. The fact that the Daniel Hayes Company owned the little hotel at Chowchilla made a difference with me. I stopped at the hotel when I was in Chowchilla. The name was Chowchilla Hotel. I did not see any sign on there that it was owned by the Daniel Hayes people. I did not ask anybody whether it was owned by the Daniel Hayes people. They told me they owned the bank

(Testimony of Fred O. Nelson.)

in Chowchilla. I did not go in the bank while I was at Chowchilla. I did not pay much attention to it. This man Smith, when we drove past it, says "This is the bank the Hayes people own -- Chowchilla Bank".

Q Now isn't it a fact that that is the only place you heard it, and not from Mr. Fries?

A No; all the agents said that. The first fellows that came around told me.

Q And E. B. Smith told you?

A Yes, sir.

(THE WITNESS:) I am absolutely positive Fries told me. The occasion was the first time when he was around. I am not sure Mr. Smith did not say that the bank was the one through which the Daniel Hayes Company did business. He said they owned it. That was prior to the time I met Mr. Fries, and the other men told me also; they all told the same story. When I made this exchange, I came into the Daniel Hayes Company on the 3rd of October. They had been talking exchange for some little time. It was never mentioned that they would take my ranch before that time. He said once he would try to sell it. Mr. Fries put the price of $150 per acre on the ranch. That price was not satisfactory because I had been offered $165. They got me cornered talking to me, Mr. Fries did. I never got away, but when you are talking with a man you don't feel like getting up and walking away from him. I did not figure I was losing $15 per acre, because he offered to sell it at

(Testimony of Fred O. Nelson.)

$50 per acre profit and take $10 per acre commission. The Chowchilla land I was to receive was not clear. I never went back to see the land at all until last summer. I went into the company along the first days of November and wanted to see Fries. Fries was gone again. They said that Fries had been in the office and just left. I do not know of my own knowledge whether he had been there or not. I never saw him again at all.

Q Was Mr. Sefton present during all the time Fries was talking to you?

A Well, sometimes Fries and he went and talked between themselves.

Q And is it not a fact that Fries told you that everything he did would have to be O. K'd by Mr. Sefton?

A Well, not all the time. Fries told me that he could O. K. anything that he said would go through. He told me that when we started to talk about the deal with the farm, that anything he O. K'd was all right.

Q When was that?

A That was when we started to talk about trading the farm there; when I got in there.

Q And he did go and consult with Sefton on everything?

A. Well, they talked the matter over between themselves. I don't know what he said to Sefton or what - -

(Testimony of Thurston C. Souden.)

T. C. SOUDEN, recalled on behalf of defendant, testified:

BY MR. HARRIS:

The characteristics of alkali lands are that the alkali usually seeks the high places. The treatment of alkali land is to make hills and dales so as to give this alkali an opportunity to seek the high places. In treating heavy alkali soil, the soil is usually drawn up in ridges and invariably you will find the heavy seeding will grow in a furrow in the bottom. The alkali will be on top of the ridge. I have never seen any alkali land where the alkali was in the low spots, but good land on the high spots.

CROSS EXAMINATION

BY MR. WEISL:

I have seen experiments conducted along these lines all over the southern part of California. Hummocks are especially built in order to attract the alkali to the higher places. A crop will grow in the valleys between the hummocks. The hummocks are made out of natural soil. A piece of land could not contain 50 per cent. alkali.

Q Do you mean that there is not a piece of land which contains 50% alkali?

A No, sir, that is what I mean, there is not.

Q And there is not an acre of land that is complete alkali?

A No, sir, not that I ever heard of.

As a rule land that contains more than 2 per cent.

(Testimony of Thurston C. Souden.)

alkali is crop-prohibitive. I mean two per cent. by volume and not by appearance. Land with two per cent. by volume would be absolutely white, covered, all over. The statistics that we are furnished show that alkaline soil that has greater than half of one per cent. has to be treated to make it productive, by means of hummocks and the gravity system of irrigation and by planting crops that have three different root systems, one that will have a root system working close to the surface, one that goes down four or five inches and another that has roots that will go down four or five feet.

CHARLES F. FRIES, recalled

BY MR. MOODY:

I never told Mr. Nelson I owned 640 acres of land at Chowchilla. The most I ever owned there was 140. I did at one time have a contract for 140 acres. I did not to my knowledge tell him the 240 ranch I had in the Red River Valley, Minnesota was an improved farm and that I had farmed it. I never told him that the Daniel Hayes Company owned a hotel a Chowchilla or that they owned a building at 109 North Dearborn Street. Mr. Nelson volunteered a great many remarks at the meeting at Elgin as to the possibilities of Chowchilla but he made no remarks that were adverse to the proposition.

This was all the testimony taken.

H H Harris
Clyde N. Moody
Attorney for Defendant
Charles F Fries

Thereafter the Commissioner made an order remanding the defendant to the custody of the United States Marshall for removal to the Northern District of Illinois, Eastern Division.

Thereafter Hon. Benjamin F. Bledsoe, Judge of the United States District Court, Southern Division of California, inspected and read the transcript of testimony and all of the exhibits and duly made his order herein remanding the defendant to the custody of the United States Marshall for removal to the Northern District of Illinois, Eastern Division.

Thereafter the defendant served and filed, within the time required by law, and in the manner required by law, his petition for a writ of error, and duly served and filed his assignment of errors.

That said bill of exceptions contains all of the evidence received and heard before the Commissioner in said cause and the proceedings before the Commissioner, and the same is hereby filed and allowed this 17th day of October, 1922.

Bledsoe

District Judge.

IT IS STIPULATED that the bill of exceptions contains all the evidence received by the Commissioner and all the proceedings in said cause.

Joseph C Burke
United States District Attorney.

By Robert B Camarillo
Asst U. S. Atty.

[Endorsed]: 280 Removal IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. UNITED STATES, Plaintiff. vs. CHARLES F. FRIES, Defendant. PROPOSED BILL OF EXCEPTIONS. Received a copy of the within Bill of Exceptions this 3rd day of October, 1922. Joseph C. Burke U. S. Atty. Mack Meader Asst. U. S. Atty Attys for Pltf FILED OCT 3 1922 CHAS. N. WILLIAMS, Clerk By Murray E. Wire Engrossed Bill of Exceptions FILED OCT 17 1922 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Clyde R Moody H. H. HARRIS 346 T. I. & T Bldg Los Angeles, California Pico 5098

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES OF AMERICA, Plaintiff, vs CHARLES F. FRIES, Defendant.	Assignment of Errors.

Comes now the defendant above named, Charles F. Fries, and files the following statement and assign-

ment of errors upon which he will rely upon prosecution of a writ of error in the above entitled cause, a petition for which writ on behalf of said defendant is filed at the same time with this assignment.

I

The Court erred in overruling the objection of the defendant to the indictment, a certified copy of which was introduced in evidence before the United States Commissioner in the hearing of the above entitled cause before him, and the objection of said defendant to each and every count thereof, for the following reasons:

a. That said indictment does not, nor does any count thereof, state facts sufficient to constitute a punishable offense or any offense against the laws or statutes of the United States.

b. The said indictment, and each count thereof, is insufficient and bad in law in that the alleged scheme and artifice to defraud is shown by the specific allegations purporting to set forth and describe said scheme and artifice not to be a scheme and artifice to defraud within the meaning of section 215 of the Federal

c. The said indictment, and each count thereof, is insufficient and bad in law in that whereas it is admitted in said indictment that a portion of the land therein mentioned was fit for cultivation, or capable of easily being made suitable for such cultivation, it is nowhere alleged in said indictment that it was a part of said scheme and artifice to sell land that Penal Code.

was not fit for cultivation to any of the persons or class of persons whom the said indictment alleges the defendants were by the alleged scheme and artifice to defraud.

d, The said indictment, and each count thereof, is insufficient and bad in law in that it is not stated in any of said counts to what persons or individuals the defendants made the pretensions and representations, or conspired to make the pretensions and representations alleged therein to have been made by the said defendants, nor is it alleged that said persons and individuals were to the Grand Jury unknown.

e. The first count of said indictment is insufficient and bad in law in that it is not stated in said count what offenses against the United States the defendants conspired, etc., to commit.

f. The first count of said indictment is insufficient and bad in law in that it is not an offense against the United States to take and receive from the Post Office establishment letters, etc., as alleged in Paragraph 3 of said count.

g. The first count of said indictment is insufficient and bad in law in that it is not alleged that the defendants conspired or intended to use the Post Office establishment of the United States.

h. The first count of said indictment is insufficient and bad in law in that it does not allege that the defendants conspired "to devise a scheme and artifice to defraud", etc.

i. Said indictment, and each count thereof, is insufficient and bad in law in that it does not set forth who were the "other agents" of said corporation mentioned in Paragraph 4 of the first count thereof, nor that said "other agents" were to the Grand Jury unknown,

j. Said indictment, and each count thereof, is insufficient and bad in law in that it is not shown how the defendant Charles F. Fries, was to receive the benefit of the moneys, property, securities, etc., which it is alleged were to be paid and transferred to the Corporation "The Daniel Hayes Company".

k. Said indictment and each count theerof, is insufficient and bad in law in that it is not alleged that the defendants, and particularly the defendant Charles F. Fries, knew that there were excessive natural deposits of alkali on the greater portion of such lands, or that there was a want of continuously running streams or of sufficient rain-fall.

1. The second count of said indictment is insufficient and bad in law in that it refers to a certain circular, to wit the circular set forth in overt act No. 1, under the heading "Overt Acts" in the first count thereof, whereas in said first count there are two overt acts alleged each numbered 1, and therefore said second count is uncertain and vague, and does not inform the defendant of the offense with which he is charged.

m. Counts numbered 2, 3, 4, and 6 are insufficient and bad in law in that each refers to an overt

act in count number one and to a letter or circular referred to by number in count number one under the heading "Overt Acts", whereas no letters or circulars are set out in count number one under the numbers referred to, and therefore said counts numbered 2, 3, 4 and 6 are vague and uncertain and do not inform the defendant of the offense with which he is charged.

n. Counts numbered 5, 7, 8, 9, 10, 11, 12, and 13 of said indictment are insufficient and bad in law in that the various letters and circulars alleged to have been mailed show by their contents that they were not mailed for the purpose of executing said scheme and artifice to defraud, and that they were not part of or connected with the scheme and artifice to defraud alleged in said first count of said indictment and referred to in said other counts.

o. The second to the thirteenth counts, inclusive, of said indictment are sufficient and bad in law in that they do not set forth or charge that the defendants or any of them devised or attempted to devise a scheme and artifice to defraud, within the meaning of section 215 of the Federal Penal Code, nor is any such scheme or artifice set forth or alleged.

p. That said indictment does not, nor does any count thereof, set forth facts sufficient to constitute a cause of action against this defendant.

And the defendant's exception to the overruling his objections to said indictment was duly taken and allowed.

II

That there is no competent evidence in the record to show that said defendant, Charles F. Fries conspired with the other defendants as alleged in said indictment, or that he devised a scheme and artifice to defraud as alleged in said indictment.

III

That court erred in ordering the defendant removed to the Northern District of Illinois, Eastern Division for the reasons stated in Paragraph II hereof.

IV

That the court erred in ordering the defendant removed to said District for the reason that the record and evidence affirmatively show that said defendant did not conspire as as alleged in said indictment, and did not devise a scheme and artifice to defraud as therein alleged.

V

That the court erred, as matter of law, in denying the defendant's motion that he be discharged from custody, to which ruling the exception of the said defendant was duly taken and allowed.

And upon the foregoing assignment of errors and upon the record in said cause, the defendant, Charles F. Fries, prays that the order and judgment of the court rendered therein may be reversed, and he be discharged from custody.

Dated Sept 12, 1922.

Clyde R. Moody

H. H. Harris

Attorneys for said defendant.

We hereby certify that the foregoing Assignment of Errors is made in behalf of the petitioner for a Writ of Error, and are in our opinion well taken, and the same constitute the Assignment of Errors upon the Writ prayed for.

Clyde R. Moody

H. H. Harris

Attorneys for said defendant.

[Endorsed]: No. 280 Rem. UNITED STATES District Court Southern District of California Southern Division In the Matter of UNITED STATES OF AMERICA, Plaintiff, vs. CHARLES F. FRIES, Defendant. ASSIGNMENT OF ERRORS Recd. copy of within this 13th day of Sept. 1922. Mark L. Herron Filed Sept. 14, 1922 Chas. N. Williams, Clerk. By R S Zimmerman, Deputy. CLYDE R. MOODY and H. H. HARRIS Attorneys for defendant. 46 Title Insurance Bldg. Los Angeles, California

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IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs	)	Petition for Writ of Error.
CHARLES F. FRIES,	)	
Defendant.	)	

Your petitioner, Charles F. Fries, defendant in the above entitled cause, brings, this, his petition for a Writ of Error to the District Court of the United States, in and for the Southern District of California, and in that behalf your petitioner says:

That on the 19 day of April 1922, there was made, given and rendered in the above entitled court and cause, an order and judgment against your petitioner, whereby your petitioner was ordered removed to the Northern District of Illinois, Eastern Division, there to answer to an indictment returned against him in said District and Division; and your petitioner says that he is advised by his counsel and avers that there was and is manifest error in the records and proceedings had in said cause, and in the making, giving and entry of such order and judgment, to the great injury and damage of your petitioner, each and all of which errors will be more fully made to appear by an examination of said records, and by an examination of the Bill of Exceptions to be hereafter by *you* petitioner tendered and filed, and the assignment of errors which is filed with this petition; and to the end that the order, judgment and proceedings in said cause may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, your petitioner prays that a Writ of Error may be issued directed therefrom to the said District Court of the United States, in and for the Southern District of California, Southern Division, returnable according to law and the practice of the Court, and that there

may be directed to be returned pursuant thereto a true copy of the Record, Bill of Exceptions, Assignment of Errors, and all proceedings had and to be had in said cause, and that the same may be removed unto the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the error, if any has happened, may be duly corrected, and full and speedy justice done your petitioner.

And your petitioner makes the Assignment of Errors filed herewith, upon which he will rely, and will be made to appear by a return of the said record, in obedience to said Writ.

WHEREFORE, Your petitioner prays the issuance of a Writ as herein prayed, and that the Assignment of Errors filed herewith may be considered as his assignment upon the Writ, and that the order and judgment rendered as stated in this cause may be reversed and held for naught, and that said cause be remanded for further proceedings, and that he be awarded a supersedeas upon said order and judgment, and all necessary process, including bail.

Charles F Fries

Clyde R. Moody

H H Harris

Attorneys for defendant.

[Endorsed]: No. 280 Rem. UNITED STATES District Court Southern District of California Southern Division In the Matter of UNITED

STATES OF AMERICA, Plaintiff vs. CHARLES F. FRIES, Defendant. PETITION FOR WRIT OF ERROR Filed Sept. 14., 1922 Chas. N. Williams, Clerk. By R S Zimmerman, Deputy. Recd. copy of within this 22nd day of Sept. 1922 Mark L. Herron CLYDE R. MOODY and H. H. HARRIS, Attys. for Deft. 346 Title Insurance Bldg., Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs	)	Order Allowing Writ of Error.
CHARLES F. FRIES,	)	
Defendant.	)	

Upon motion of Clyde R. Moody, Esq., and H. H. Harris, Esq., attorneys for the defendant, Charles F. Fries, and upon filing the Petition for a Writ of Error and Assignment of Errors, it is ordered that a Writ of Error be and same hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the order and judgment heretofore entered; that pending the decision upon said Writ of Error the supersedeas prayed for

by the defendant in his petition for Writ of Error herein is hereby allowed and the defendant, Charles F. Fries, is ordered admitted to bail upon said Writ of Error in the sum of $5000.
Dated Sept 13, 1922.

Bledsoe

Judge of the District Court.

[Endorsed]: No. 280 Rem. UNITED STATES District Court Southern District of California Southern Division In the Matter of UNITED STATES OF AMERICA, Plaintiff vs. CHARLES F. FRIES, Defendant ORDER ALLOWING WRIT OF ERROR Recd. copy of within this 13th day of Sept. 1922 Mark L. Herron Filed Sept. 14, 1922. Chas. N. Williams, Clerk. By R S Zimmerman, Deputy. CLYDE R. MOODY and H. H. HARRIS Attorneys for defendant. 346 Title Insurance Bldg. Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES OF AMERICA,	)	No.
Plaintiff,	)	
vs.	)	BOND.
CHARLES F. FRIES,	)	
Defendant.	)	

KNOW ALL MEN BY THESE PRESENTS: That we, CHARLES F. FRIES as principal, and

CHARLES A. LARSON and GEORGE W. MARCHAND, jointly and severally, acknowledge ourselves indebted to the United States of America in the sum of Five Thousand, Two Hundred and Fifty ($5,-250.00) Dollars, lawful money of the United States of America, upon the following terms and conditions:

WHEREAS, the said CHARLES F. FRIES has sued out a writ of error in judgment of the District Court of the United States for the Southern District of California, Southern Division, in the case in said Court wherein the United States of America are plaintiffs and the said CHARLES F. FRIES is defendant, for review of said judgment in the United States Circuit Court of Appeals in the 9th Circuit:

NOW, if the said CHARLES F. FRIES shall appear and surrender himself in the District Court of the United States, in the Southern District of California, Southern Division, on and after the filing in the said District Court of a mandate of the said Court of Appeals, and from time to time thereafter as he may be required to answer any further proceedings and abide by and perform any judgment or order which may be had or rendered therein in this case, and shall abide by and perform any judgment or order which may be rendered in the said United States Circuit Court of Appeals in the 9th Circuit, and shall pay all costs imposed upon him, not exceeding the sum of Two Hundred Fifty ($250.00) Dollars, then this obligation shall be void; otherwise to remain in full force and virture.

WITNESS our hands and seals this 13th day of September, 1922.

Charles L. Fries (SEAL)

Charles A. Larsen (SEAL)

147 N. Rugby St. Huntington Park

(Seal)

George W. Marchand (SEAL)

319 W. Clarendon, Huntington Park

Southern District of California, ss.

GEORGE W. MARCHAND & CHARLES A. LARSON being duly sworn, each for himself deposes and says that he is a householder in said District, and is worth the sum of $5250 Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

Subscribed and sworn to before me this 13 day of Sept. A. D. 1922

Charles A. Larson

George W. Marchand

Stephen G. Long

United States Commissioner

The form of the foregoing Bond and the sufficiency of the sureties thereto is hereby approved.

Stephen G. Long

United States Commissioner

(SEAL)

Subscribed and sworn to before me
this 13th day of September, 1922
CHAS. N. WILLIAMS,
Clerk U. S. District Court, Southern
District of California.
By L. J. Cordes

Deputy.

Taken and approved this 13th day of September, 1922, before me.
Bledsoe

District Judge.

Examined and recommended for approval as provided in Rule 29.
H. H. Harris

Attorney at Law.

O.K. Mark L. Herron

Assistant United States Attorney

[Endorsed]: No. 280 Rem. IN THE District COURT OF THE UNITED STATES FOR THE Southern District of California Southern Division UNITED STATES OF AMERICA, Plaintiff, vs. CHARLES F. FRIES, Defendant. BOND Filed Sept. 14, 1922. Chas. N. Williams, Clerk. By R S Zimmerman, Deputy. H. H. HARRIS 342-343 Title Insurance Bldg. Los Angeles, Cal. Telephone Broadway 5578

UNITED STATES OF AMERICA DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff	) CLERK'S OFFICE
- vs -	) No. 280 Rem
CHARLES F. FRIES, Defendant.	) PRAECIPE.

TO THE CLERK OF SAID COURT:

Sir:

Please prepare and make return to the writ of error herein and make copies of the following papers in above case:

Assignment of Errors,
Bill of Exceptions
Citation
Minutes
Names & Addresses of Attorneys
Opinion of the Court
Order of Removal
Order allowing Writ of Error
Petition for Warrant of Removal
Petition for Writ of Error
Praecipe
Superseceas Bond and Cost Bond
Writ of Error.

H. H. Harris Atty. for defendant

By R. B. Camarillo

[Endorsed]: No. 280 Rem U. S. District Court SOUTHERN DISTRICT OF CALIFORNIA United States of America Plaintiff vs Charles F. Fries PRAECIPE FOR Copies of papers in case Filed Oct 17 1922 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk

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IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES OF AMERICA, Plaintiff, vs. CHARLES F. FRIES, Defendant.	CLERK'S CERTIFICATE.

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing pages, numbered from 1 to inclusive, to be the Transcript of Record on Writ of Error in the above entitled cause, as printed by plaintiff in error, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, writ of error, petition for warrant of removal, notice of application for order of removal, opinion, order of removal, bill of exceptions, assignment of errors, petition for writ of error, order allowing writ of error, bond, and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Writ of Error amount to
and that said amount has been paid me by the plaintiff in error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this day of October, in the year of our Lord One Thousand Nine Hundred and Twenty-two, and of our Independence the One Hundred and Forty-seventh.

CHAS. N. WILLIAMS,
Clerk of the District Court of the United States of America, in and for the Southern District of California.
By

Deputy.